



# SOUTH CAROLINA SALES AND USE TAX MANUAL

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SOUTH CAROLINA DEPARTMENT OF REVENUE

POLICY DIVISION

Henry D. McMaster, Governor

W. Hartley Powell, Director

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## **Introduction**

The purpose of this sales and use tax manual is to provide businesses, Department of Revenue employees, and tax professionals a central summary of information concerning South Carolina's sales and use tax law and regulations. To that end, the manual references specific authority, including the law, regulations, court cases, Attorney General Opinions, and Department advisory opinions.<sup>1</sup>

While it is not possible to discuss every issue, this manual strives to deal with a variety of issues. In addition, due to changes in tax law as well as new court decisions, this manual is a constant "work-in-progress." With that in mind, your suggestions for improvements and areas of discussion for future editions are welcomed.

## **Disclaimer**

This publication is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this publication supersedes, alters, or otherwise changes provisions of the South Carolina code, regulations, or Department advisory opinions. This publication does not represent official Department policy. The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

South Carolina Department of Revenue  
Policy Division – Sales Tax Team  
Post Office Box 125  
Columbia, SC 29214-0575  
[Walter.Tarcza@dor.sc.gov](mailto:Walter.Tarcza@dor.sc.gov)  
[Logan.Mitchell@dor.sc.gov](mailto:Logan.Mitchell@dor.sc.gov)

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<sup>1</sup> Department advisory opinions include revenue rulings, revenue procedures, private letter rulings, technical advice memorandums, and information letters.

## References

Department Website. This publication cites many South Carolina code sections, regulations, attorney general opinions, and Department advisory opinions (Revenue Procedures, Revenue Rulings, etc.). The full text of these references is available through the Department’s website at: [dor.sc.gov/policy](http://dor.sc.gov/policy).

Advisory Opinions by E-Mail. The Department has an “Advisory Opinion E-Mail Subscription Service.” Persons who sign up for this free service will automatically receive draft, temporary, and final Revenue Rulings and Revenue Procedures, and final Private Letter Rulings and Information Letters by e-mail. These statements provide guidance concerning the application of laws administered by the Department. To sign up, go to the Department’s website and click on “Policy & Publications,” then “Law & Policy,” and then “Sign up to receive Policy emails.”

Advisory Opinion Index. Advisory opinions issued by the Department are available on the Department’s website and are indexed by both tax type and calendar year. To view these indexes, go to [dor.sc.gov/policy](http://dor.sc.gov/policy).

Other Sites. Also available through the Department’s website are Administrative Law Court decisions and proposed legislation at the General Assembly. These sites can be accessed from the Department’s website by clicking on “Policy & Publications,” “Law & Policy,” and “Helpful Links.”

## Acknowledgements

The Policy Division would like to thank John McCormack, the original primary editor and author of this manual many years ago, for his vision for this publication and his dedication to providing taxpayers, tax professionals, and employees a central summary of information concerning South Carolina’s sales and use tax laws, regulations, and advisory opinions.

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## Chapter 1

### General Overview

#### A. History

The state sales and use tax was first imposed in South Carolina in 1951. The imposition of the tax was upheld by the State Supreme Court in *State ex rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951). Over the years, the state tax rate has increased as follows:

1951 – 3%<sup>1</sup>

1969 – 4%<sup>2</sup>

1984 – 5%<sup>3</sup>

2007 – 6%<sup>4</sup>

As enacted in 1951, the original state sales and use tax law contained 19 exemptions. Today, there are 81 exemptions;<sup>5</sup> and several of these 81 “exemption provisions” are in fact multiple exemptions. In addition, there are other sales and use tax exemptions contained in other areas of the South Carolina Code of Laws.

The original sales and use tax law established a maximum tax of \$75.00 on any single item. This was repealed in 1955.<sup>6</sup> From 1984 through 1986 various maximum tax provisions were enacted for specific items, such as motor vehicles, boats, aircraft, self-propelled light construction equipment, certain trailers, manufactured homes, musical instruments and office equipment sold to a religious organization, and certain research and development machinery.<sup>7</sup>

Over the years, the imposition of the sales and use tax has been expanded to include various services and intangibles such as sleeping accommodations, communication services, laundry and drycleaning services, and electricity.

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<sup>1</sup> Act No. 379 of 1951.

<sup>2</sup> Act No. 274 of 1969.

<sup>3</sup> Act No. 512 of 1984.

<sup>4</sup> Act No. 388 of 2006.

<sup>5</sup> South Carolina Code §12-36-2120 lists 83 exemptions; however, two of those exemptions (numbers (76) and (77)) were ruled unconstitutional. Additionally, the legislature also may enact annual provisos that exempt certain items from sales and use tax, although the exemptions are not codified.

<sup>6</sup> Act No. 234 of 1955.

<sup>7</sup> The maximum tax for certain research and development machinery was later repealed and replaced by a full exemption for such machinery.

In 1991, the first local sales and use tax to be administered and collected by the Department of Revenue was authorized by the General Assembly. Today, the Department of Revenue administers and collects on behalf of local jurisdictions several types of local sales and use taxes as well as the Catawba Tribal Sales Tax.

These provisions, as well as many others found in the present sales and use tax law, will be discussed in this publication.

The “South Carolina Sales and Use Tax Act” can be found in Chapter 36 of Title 12.

## **B. Rates and Impositions**

South Carolina imposes a 6% sales tax<sup>8</sup> on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property.<sup>9</sup>

South Carolina imposes a complementary 6% use tax<sup>10</sup> on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser.<sup>11</sup> If the purchaser, however, has a receipt from a seller required or authorized to collect the state use tax showing the seller has collected the tax from the purchaser, the purchaser is relieved of the liability for the tax.<sup>12</sup> South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property.

In addition to applying to the sale or use of tangible personal property (e.g., furniture, clothing, computers, etc.), the sales and use taxes also apply to:

- (1) certain communication services,<sup>13</sup>
- (2) laundry and dry cleaning services,<sup>14</sup>
- (3) electricity,<sup>15</sup>

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<sup>8</sup> South Carolina Code §§12-36-910(A) and 12-36-1110.

<sup>9</sup> South Carolina Code §12-36-110(1)(c).

<sup>10</sup> South Carolina Code §§12-36-1310(A) and 12-36-1110.

<sup>11</sup> South Carolina Code §12-36-1310(A).

<sup>12</sup> South Carolina Code §12-36-1330. See also South Carolina Code §12-36-2130(1) and *McJunkin v. City of Orangeburg*, 238 F.2d. 528 (1956).

<sup>13</sup> South Carolina Code §§12-36-910(B)(3), 12-36-910(B)(5), 12-36-1310(B)(3), 12-36-1310(B)(5), and 12-36-2645; South Carolina Regulation 117-329, “Communications Services.”

<sup>14</sup> South Carolina Code §§12-36-910(B)(1) and 12-36-1310(B)(1).

<sup>15</sup> South Carolina Code §§12-36-910(B)(2) and 12-36-1310(B)(2).

- (4) the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer,<sup>16</sup>
- (5) transient construction property,<sup>17</sup> and
- (6) the furnishing of accommodations.<sup>18</sup>

South Carolina imposes a 7% sales tax<sup>19</sup> on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person and a 6% sales tax<sup>20</sup> on “additional guest charges” added to the guest’s room charge for a specific amenity or service.

## C. Local Sales and Use Taxes

Local governments have limited authority to levy local taxes and fees. A local governing body may not impose a new tax unless specifically authorized by the General Assembly. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these are administered and collected by the Department in the same manner as the state sales and use taxes. Below is a brief description of the local taxes. For more information on these local taxes, see Chapter 12 of this manual.

## D. Local Taxes Administered by the Department

General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.<sup>21</sup> The tax must be approved by voter referendum and is typically referred to as the “local option sales tax.”

Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for a transportation project by either imposing a sales and use tax up to 1% or by authorizing a transportation authority created by the county governing body to impose tolls.<sup>22</sup> The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money. At no time may any portion of the county area be subject to both the local sales and use tax for transportation facilities and the capital project sales tax (discussed below).

<sup>16</sup> South Carolina Code §§12-36-910(B)(4) and 12-36-1310(B)(4).

<sup>17</sup> South Carolina Code §12-36-1320.

<sup>18</sup> South Carolina Code §12-36-920.

<sup>19</sup> South Carolina Code §12-36-920(A).

<sup>20</sup> South Carolina Code §§12-36-920(B) and 12-36-1110.

<sup>21</sup> South Carolina Code §4-10-20.

<sup>22</sup> South Carolina Code §4-37-30.

Capital Project Sales Tax. A governing body of a county may impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.<sup>23</sup> The increase is imposed by enacting an ordinance, subject to approval by voter referendum. It may not be imposed for more than 8 years for newly imposed taxes or 7 years for reimposed taxes. At no time may any portion of the county area be subject to both the capital project sales tax and the local sales and use tax for transportation facilities (discussed above).

Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.<sup>24</sup> The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year. Currently, this tax is not being imposed.

School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%. Currently, only six of the 20 school district taxes that have been authorized by the General Assembly are being imposed.

Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in Lancaster and York counties. South Carolina Code §27-16-130(H) contains the specific sales and use tax provisions relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.<sup>25</sup> For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of this manual.

Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.<sup>26</sup> The tax provides a credit against property tax imposed by a political subdivision. Currently, this tax is not being imposed.

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<sup>23</sup> South Carolina Code §4-10-300.

<sup>24</sup> South Carolina Code §4-10-540.

<sup>25</sup> See South Carolina Revenue Ruling #98-18 and South Carolina Information Letter #20-2, Notes 1 and 2 for additional information.

<sup>26</sup> South Carolina Code §§4-10-720 through 4-10-810.

Education Capital Improvements Sales and Use Tax. The General Assembly has authorized a school district or school districts within a county to impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.<sup>27</sup> The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. The General Assembly has established several criteria that, if met, will allow a county or school district to impose this tax. The county or school district must meet only one of these criteria in order to impose the tax.<sup>28</sup> This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

Tourism Development Tax. The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.<sup>29</sup> The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year.

## **E. Local Taxes Administered by Local Governments**

Local Accommodations Tax. The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%.<sup>30</sup> The revenue generated by this additional tax must be used exclusively for certain tourism purposes.

Local Hospitality Tax. The governing body of a county or municipality may impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments, or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.<sup>31</sup> The tax may not exceed 2% of the charges for food and beverages.

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<sup>27</sup> South Carolina Code §§4-10-410 through 4-10-470 (Act No. 316 of 2008).

<sup>28</sup> South Carolina Code §4-10-470.

<sup>29</sup> South Carolina Code §§4-10-910 through 4-10-970 (Act No. 3 of 2009 and Act No. 130 of 2010).

<sup>30</sup> South Carolina Code §6-1-500.

<sup>31</sup> South Carolina Code §6-1-700.

## **F. Exclusions**

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. See Chapter 8 of this manual for more information about South Carolina's sales and use tax exclusions.

## **G. Partial Exemptions**

There are two types of exemptions provided under South Carolina's sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or "cap" the amount of tax.<sup>32</sup> The local sales and use taxes collected by the Department do not apply to sales that are subject to a limit or cap under Code Section 12-36-2110.

See Chapter 9 of this manual for more information about South Carolina's partial sales and use tax exemptions.

## **H. Full Exemptions**

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code §§12-36-2120 and 12-36-2130 contain numerous full exemptions. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.<sup>33</sup>

See Chapter 9 of this manual for more information about South Carolina's full sales and use tax exemptions.

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<sup>32</sup> See, e.g., South Carolina Code §12-36-2110.

<sup>33</sup> All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempts sales of unprepared food. See SC Regulation 117-337 and South Carolina Information Letter #20-2.

## Chapter 2

# Sales Tax Impositions

This chapter will discuss the basics of the “general” sales tax imposition and the specific “special” impositions enacted by the General Assembly. Later chapters will provide a more in depth discussion of certain concepts, such as “gross proceeds,” “sales at retail,” and “tangible personal property,” as well as the “special” impositions.

### A. General Sales Tax Imposition

“In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant.”<sup>1</sup> It is a “transaction tax” imposed with respect to the transaction of a “retail sale” of tangible personal property.

South Carolina imposes a “general” sales tax, equal to 6% of the gross proceeds of sales, upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.<sup>2</sup>

The tax will therefore be applicable if:

- a person is engaged or continuing in the business of selling,<sup>3</sup>
- the person is selling tangible personal property in South Carolina, and
- the sales of tangible personal property in South Carolina are at retail.<sup>4</sup>

The tax, if the above conditions are met, will be based upon the “gross proceeds of sales.”<sup>5</sup>

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<sup>1</sup> *State ex. rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951).

<sup>2</sup> South Carolina Code §§12-36-910 and 12-36-1110.

<sup>3</sup> SC Regulation 117-322 states that “[c]asual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.” (Emphasis added). The regulation defines the term “casual” to mean “occurring, encountered, acting or performed without regularity or at random” and defines the term “occasional” and the term “isolated” to mean “occurring alone or once, an incident not likely to recur, sporadic.” See South Carolina Code §12-36-70 for the definition of “retailer” and “seller.”

<sup>4</sup> *International Harvester Co. v. Wasson*, 281 S.C. 458, 316 S.E.2d 378 (1984).

<sup>5</sup> South Carolina Code §12-36-90.



With respect to goods shipped into South Carolina, the sales tax will apply (as opposed to the use tax) when:<sup>6</sup>

- tangible personal property is purchased for use or consumption in this State;
- the seller is engaged or continuing within this State in the business of selling tangible personal property at retail;
- delivery is made in this State;<sup>7</sup> and
- the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business.

The seller may pass the sales tax on to the purchaser when billing the purchaser, but while many sellers collect the sales tax from the purchaser, this is not a requirement. However, the seller's inability, refusal, or failure to collect the sales tax from the customer does not relieve the seller from remitting the sales tax to the State.<sup>8</sup> In fact, the seller may advertise that the seller will absorb the sales tax and not collect it from the purchaser.<sup>9</sup>

## B. Definitions

To understand the imposition of the sales tax, the definitions provided in the law for certain terms must be reviewed.

Person<sup>10</sup> includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee,<sup>11</sup> or group or combination acting as a

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<sup>6</sup> SC Regulation 117-334.

<sup>7</sup> SC Regulation 117-334.1(A) states that “[d]elivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser’s designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser’s designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser’s designee in this State.”

<sup>8</sup> South Carolina Code §12-36-940.

<sup>9</sup> Attorney General Opinion 1228 (11/18/1961).

<sup>10</sup> South Carolina Code §12-36-30.

<sup>11</sup> An Attorney General Opinion dated 11/29/1983 concluded that, “[e]xcept for Chapter 7 liquidation sales, sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to sales taxes even when conducted pursuant to judicial order.”

unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision, or municipality.<sup>12</sup>

Tangible personal property<sup>13</sup> is personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages, or other evidences of debt.

Sale or purchase<sup>14</sup> is a transfer of title or possession of tangible personal property for a consideration. It includes rentals, leases, and licenses to use.

Sale at retail<sup>15</sup> means a sale of tangible personal property to an end-user or consumer of the property. Included within the term are (1) leases and rentals of tangible personal property, and (2) the withdrawal, use, or consumption of tangible personal property by any person who previously purchased it at wholesale.<sup>16</sup> If a sale is not a retail sale, then it is a wholesale sale.

Gross proceeds of sales<sup>17</sup> is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

Retailer and Seller<sup>18</sup> mean every person selling or auctioning tangible personal property whether owned by the person or others, including persons operating as a marketplace facilitator, as defined in Code Section 12-36-71.

## C. Summary of the General Sales Tax Imposition

Based on the general imposition and the above definitions, the sales tax, which is 6% of the total amount proceeding or accruing from the retail sales of a business, is imposed on:

- any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, state agency, instrumentality, authority, political subdivision, county, municipality, or any group or combination acting as a unit

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<sup>12</sup> See also SC Regulations 117-304 and 117-304.1.

<sup>13</sup> South Carolina Code §12-36-60.

<sup>14</sup> South Carolina Code §12-36-100. By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) also includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Sales Tax Impositions.”

<sup>15</sup> South Carolina Code §12-36-110.

<sup>16</sup> South Carolina Code §12-36-110(1)(c) and South Carolina Revenue Ruling #08-11.

<sup>17</sup> South Carolina Code §12-36-90.

<sup>18</sup> South Carolina Code §12-36-70.

- engaged in the business of selling, leasing, renting or otherwise providing for a consideration<sup>19</sup>
- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses<sup>20</sup>
- to an end-user or consumer.

## D. Special Sales Tax Impositions

South Carolina also imposes its sales tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”<sup>21</sup> As “tangible personal property,” various other provisions of the sales and use tax law apply to these services and intangibles (e.g., exemptions, wholesale sales, etc.). The following will address each of these “special” impositions.

### Laundry and Drycleaning Services<sup>22</sup>

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of providing or furnishing at retail any of the following:

- laundering services,
- drycleaning services,
- dying services, or
- pressing services.

The tax applies to all charges from these businesses related to items laundered, dry-cleaned, dyed or pressed, including but not limited to, charges for:<sup>23</sup>

- repairing,
- altering,

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<sup>19</sup> See definition of “retailer” and “seller” in Section B above.

<sup>20</sup> By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Sales Tax Impositions.”

<sup>21</sup> South Carolina Code §12-36-60.

<sup>22</sup> South Carolina Code §12-36-910(B)(1). See also *Textile Restoration Services, Inc. v. South Carolina Department of Revenue*, 14-ALJ-17-0524-CC (2015).

<sup>23</sup> SC Regulation 117-303.

- storing,
- pick-up, and
- delivery.

Charges derived from coin-operated laundromats and drycleaning machines<sup>24</sup> are not subject to the tax.<sup>25</sup> However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.<sup>26</sup>

### Electricity<sup>27</sup>

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail electricity.

### Communications Services<sup>28</sup>

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail “the ways or means for the transmission of the voice or messages.”

The tax applies to charges for:<sup>29</sup>

- Telephone services,<sup>30</sup> including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP), or any other method
- Teleconferencing services
- Paging services

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<sup>24</sup> A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

<sup>25</sup> South Carolina Code §12-36-910(B)(1).

<sup>26</sup> South Carolina Revenue Ruling #88-7.

<sup>27</sup> South Carolina Code §12-36-910(B)(2).

<sup>28</sup> South Carolina Code §12-36-910(B)(3). By definition, “tangible personal property” does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. Therefore, such transmissions are not subject to the sales tax.

<sup>29</sup> SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

<sup>30</sup> See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

- Automated Answering Services<sup>31</sup>
- Cable television services
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services
- Voice Mail Messaging Services<sup>32</sup>
- E-mail services
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.<sup>33</sup>
- Streaming services for television programs, movies, music, and other similar content<sup>34</sup>
- Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System<sup>35</sup>

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

### Manufactured Property Used by the Manufacturer<sup>36</sup>

The sales tax, equal to 6%, also applies to every manufacturer when that manufacturer manufactures within South Carolina tangible personal property for sale, but instead of selling the tangible personal property the manufacturer uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

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<sup>31</sup> See South Carolina Information Letter #89-28.

<sup>32</sup> See South Carolina Revenue Ruling #89-14.

<sup>33</sup> See also South Carolina Private Letter Ruling #12-2, South Carolina Private Letter Ruling #10-2, and South Carolina Private Letter Ruling #07-2.

<sup>34</sup> See South Carolina Revenue Ruling #16-5 and South Carolina Private Letter Ruling #18-1.

<sup>35</sup> See South Carolina Private Letter Ruling #14-4.

<sup>36</sup> South Carolina Code §12-36-910(B)(4).

For example, a manufacturer that produces computers in South Carolina for sale throughout the world is liable for the sales tax on the fair market value of any computers that it removes from its inventory to use in any of its offices or manufacturing operations in South Carolina or that it provides free to its employees.

### Prepaid Wireless Calling Arrangements<sup>37</sup>

The sales tax, equal to 6%, also applies to sales at retail of prepaid wireless calling arrangements and to recharges at retail for prepaid wireless calling arrangements. A “prepaid wireless calling arrangement” is a communication service that:

- (1) is used exclusively to purchase wireless telecommunications;
- (2) is purchased in advance;
- (3) allows the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and
- (4) are sold in units or dollars, which decline with use in a known amount.

For example, if a retailer sells a prepaid phone card that can only be used in making wireless telephone calls, then the sale or recharge of that card is subject to the sales tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

### 900 and 976 Numbers<sup>38</sup>

The sales tax, equal to 11%, also applies to the gross proceeds accruing or proceeding from the business of providing a 900 telephone service, a 976 telephone service, or both.

### Accommodations and “Additional Guest Charges”<sup>39</sup>

The sales tax is also imposed upon charges for accommodations and “additional guest charges.” The term “additional guest charge” means an amount which is added to the guest’s room charge for room service, laundering and dry cleaning services, in-room movies, telephone service, and the rental of meeting rooms.

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<sup>37</sup> South Carolina Code §12-36-910(B)(5). See also SC Revenue Ruling #04-4.

<sup>38</sup> South Carolina Code §§12-36-2645 and 12-36-1110.

<sup>39</sup> South Carolina Code §12-36-920; SC Regulation 117-307. See also SC Revenue Ruling #14-5.

Charges for rooms, lodgings, and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone service, and the rental of meeting rooms, when over and above the services customarily provided with the room, are taxed at 6% as an “additional guest charge.” However, if an “additional guest charge” would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an “additional guest charge.”

The sales tax upon charges for rooms, lodgings, and accommodations applies to the gross proceeds from the rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, motel, residence, or any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days are not considered proceeds from a transient and therefore are not subject to the sales tax on accommodations.

The sales tax upon “additional guest charges”<sup>40</sup> applies to:

- room service,
- laundering and dry cleaning services,
- in-room movies,
- telephone service, and
- rentals of meeting rooms.

For a more detailed discussion on the sales tax as it applies to accommodations and “additional guest charges,” see Chapter 11 of this manual.

### Motor Vehicles Sold to Nonresidents<sup>41</sup>

The sales tax applies to sales to nonresidents of motor vehicles, trailers, semitrailers, or pole trailers that are to be registered and licensed in the nonresident purchaser’s state of residence. This tax is the lesser of:

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<sup>40</sup> South Carolina Code §12-36-920(B); SC Regulation 117-307. See also SC Revenue Ruling #14-5.

<sup>41</sup> South Carolina Code §12-36-930.

- a) the sales tax that would be imposed on the sale in the purchaser's state of residence;
- or
- b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws.<sup>42</sup>

However, no sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina or if his state of residence does not impose a sales tax on sales of motor vehicles, trailers, semitrailers, or pole trailers.

Since the amount of tax imposed on a nonresident purchaser of a motor vehicle depends, in part, on the tax rate and type of tax imposed in the nonresident's home state, information concerning the sales tax imposed on sales of motor vehicles by other states is needed to calculate the tax due, if any.

The state sales tax information for motor vehicles for South Carolina's two neighboring states, as of the date of this publication, is:

Georgia	no sales tax is due since Georgia does not impose a sales tax on the sale or lease of a motor vehicle.
North Carolina	no sales tax is due since North Carolina does not impose a sales tax on the sale of a motor vehicle.

## **E. Sales through a Marketplace Facilitator<sup>43</sup>**

A marketplace facilitator is any person engaged in the business of facilitating a retail sale of tangible personal property by:

- a. listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; **and**
- b. collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

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<sup>42</sup> For information on vehicles that qualify for the \$500 maximum tax, see Chapter 10 of this manual.

<sup>43</sup> See South Carolina Revenue Ruling #19-6 and South Carolina Information Letter #19-14.



A marketplace facilitator also includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection or processing, or in any other manner, with respect to the marketplace. See Code Section 12-36-71 for a complete definition of a marketplace facilitator.

A “marketplace” includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum. A marketplace may be physical or electronic.

A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax.<sup>44</sup> The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

## **F. Sales to Individuals 85 Years of Age and Older<sup>45</sup>**

An individual<sup>46</sup> who is 85 years of age or older is entitled to a lower state sales tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use.<sup>47</sup> In other words, a person who is 85 years of age or older would pay a state sales tax of 5% instead of 6% (any local sales and use taxes would still apply) on:

- (1) purchases of tangible personal property (prepared food,<sup>48</sup> clothing, furniture, appliances, etc.); and
- (2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television), as well as other communication services.

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<sup>44</sup> See, e.g., South Carolina Private Letter Ruling #20-2, “Peer-to-Peer Motor Vehicle Rentals Through a Marketplace Facilitator.”

<sup>45</sup> South Carolina Code §§12-36-2620 and 12-36-2630. See also South Carolina Revenue Ruling #18-10.

<sup>46</sup> In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations, and other legal entities.

<sup>47</sup> South Carolina Code §§12-36-2620 and 12-36-2630.

<sup>48</sup> Sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the 6% state sales and use tax. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. See South Carolina Code §12-36-2120(75) and SC Regulation 117-337. The federal Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, tit. IV, § 4001, 122 Stat. 1092 (2008), renamed the federal food stamp program to the Supplemental Nutrition Assistance Program (“SNAP”).

An individual who is 85 years of age or older would pay a state sales tax of 6% instead of 7% (any local sales and use taxes would still apply) on purchases of accommodations services (the rental charge for a hotel room or condominium) and would pay a state sales tax of 5% instead of 6% on any additional guest charges (charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms) charged by the place providing the accommodations.

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale, and (4) that the purchaser provides the retailer with proof of age.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for the personal use of the individual purchaser who is 85 years of age or older. For example, purchases for a business use or as a gift for another individual are not entitled to the lower state sales and use tax rate.

## Chapter 3

### Use Tax Impositions

This chapter will discuss the basics of the “general” use tax imposition and the specific “special” impositions enacted by the General Assembly. Later chapters will provide a more in depth discussion of certain concepts, such as “sales price,” “sales or purchases at retail,” and “tangible personal property” as well as the “special” impositions.

#### A. General Use Tax Imposition<sup>1</sup>

South Carolina imposes a “general” use tax, equal to 6% of the sales price of the property, on the use, storage, or consumption of tangible personal property purchased at retail for use, storage, or consumption in South Carolina.<sup>2</sup> The use tax was enacted in 1951 – the same year the sales tax law was adopted in South Carolina. It is a “transaction tax” imposed with respect to the transaction of “using, storing, or consuming” tangible personal property “purchased at retail” for use, storage, or consumption in South Carolina.

While the sales tax is imposed on retail sales in South Carolina, it is supplemented by the use tax which is imposed on the storage, use, or other consumption in South Carolina of tangible personal property purchased at retail regardless of whether the retailer is or is not engaged in business in South Carolina.<sup>3</sup> “Double taxation is avoided by providing...that the user shall be relieved of liability for the use tax on property subject to the sales tax and on which the tax has been paid, or when the retailer has given the purchaser a receipt for the same.”<sup>4</sup>

Essentially, the use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage, or consumption in South Carolina, and includes purchases from retailers made via the Internet (e.g., sales made via a retailer’s website, auction website, or web-based application), through out-of-state catalog companies or when visiting another state or another country.

With respect to goods shipped into South Carolina, the use tax (as opposed to the sales tax) will apply when<sup>5</sup>

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<sup>1</sup> South Carolina Code §12-36-1310(A). See also, South Carolina Revenue Ruling #18-9.

<sup>2</sup> *Senn Trucking Company v. Wasson*, 280 SC 279, 312 S.E.2d 252 (1984).

<sup>3</sup> South Carolina Code §12-36-1310(A).

<sup>4</sup> *McJunkin Corporation v. City of Orangeburg*, 238 F.2d 528 (1956); South Carolina Code §§12-36-2130(1) and 12-36-1330(B).

<sup>5</sup> SC Regulation 117-334.2.

- tangible personal property is purchased for use or consumption in this State;
- delivery is made in this State; and
- the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser's designee and there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet or other place of business.

Furthermore, “[w]hen tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser’s designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax. If the receipt from a seller does not separately state the South Carolina tax, the Department may assess either the purchaser or the seller (if licensed or nexus exists) for the use tax.”<sup>6</sup>

The state tax rate for the use tax is the same as the sales tax. The total tax rate (state and local) is determined by where the tangible personal property will be used, stored, or consumed, regardless of where the sale actually takes place.<sup>7</sup>

The use tax is imposed upon the consumer (**purchaser**) of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. However, South Carolina will allow a credit against the state and local use tax due in South Carolina for the state and local sales or use tax due and paid in another state on the purchase of tangible personal property.<sup>8</sup> The statute does not require that the other state offer a similar credit.

In order for the taxpayer liable for the use tax in South Carolina to take the credit,<sup>9</sup> the following requirements must be met:

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<sup>6</sup> SC Regulation 117-334.2(C).

<sup>7</sup> The purchaser is not liable for a jurisdiction's local use tax if he takes delivery in another jurisdiction and pays the other jurisdiction's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the full local use tax due.

<sup>8</sup> South Carolina Code §12-36-1310(C).

<sup>9</sup> South Carolina Code §12-36-1310(C).

- 1) The taxpayer must have purchased tangible personal property<sup>10</sup> in one of the other 49 states or the District of Columbia.<sup>11</sup>

Note: A credit is not allowed for any sales or use tax due and paid in another country or in a territorial possession of the United States.

- 2) A sales or use tax must have been legally due on the purchase transaction in the other state.
- 3) The sales or use tax that was legally due on the purchase transaction in the other state must have been paid in that state.
- 4) The taxpayer must have proof that the sales or use tax was due and paid in the other state.

Finally, if the state and local sales or use tax due and paid in the other state is less than the amount of state and local use tax due in South Carolina, the taxpayer liable for the use tax in South Carolina must pay the difference to the South Carolina Department of Revenue. If the state and local sales or use tax due and paid in the other state is greater than the state and local use tax due in South Carolina, the taxpayer is not entitled to a refund.<sup>12</sup>

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has either physical presence or economic nexus in South Carolina.<sup>13</sup>

Examples of physical presence include, but are not limited to, maintaining (temporarily or permanently) an office, warehouse, store, other place of business, or property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain a retail license and collect and remit the tax to South Carolina.

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<sup>10</sup> South Carolina Code §12-36-60.

<sup>11</sup> Several states do not impose a state sales tax or use tax. In addition, it has been the longstanding policy of the Department to consider the District of Columbia a state for purposes of this credit. Therefore, any further reference to another state in this manual is considered to include the District of Columbia.

<sup>12</sup> Each purchase transaction must stand on its own. In other words, if the state and local sales or use tax due and paid in another state on one purchase transaction is greater than the state and local use tax due in South Carolina, the “excess” tax paid in the other state on the purchase transaction cannot be used to offset any use tax that may be due in South Carolina on another out-of-state purchase transaction. See South Carolina Revenue Ruling #06-4.

<sup>13</sup> See Chapter 13 of this manual. See also, South Carolina Revenue Rulings #14-4 (on physical presence nexus) and #18-14 (Retailers Without a Physical Presence (“Remote Sellers”) – Economic Nexus).

If the purchaser has a receipt showing the **entire** South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax is due with respect to a single transaction, but not both.

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage, or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) that the property when purchased was intended for a bona fide use outside the state of South Carolina; (2) that the first actual use of the property was outside the state of South Carolina; and (3) that the first actual use of the property was substantial and constituted the primary use for which the property was purchased.<sup>14</sup>

The responsibility for proof rests upon the purchaser and until the above facts are established to the satisfaction of the Department, it will be presumed that the use of such property in South Carolina is subject to a use tax.

Unlike the sales tax, a retailer must collect the use tax from the purchaser.<sup>15</sup> The retailer may not advertise or state, in any manner, that the use tax, or any part of it, will be assumed or absorbed by the retailer, will not be added to the selling price, or will be refunded.<sup>16</sup>

## **B. Definitions**

To understand the imposition of the use tax, the definitions provided in the law for certain terms must be reviewed.

Person<sup>17</sup> includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, or group or combination acting as a unit. It also includes the State, state agencies, and any instrumentality, authority, political subdivision, or municipality.

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<sup>14</sup> SC Regulation 117-320.1.

<sup>15</sup> South Carolina Code §12-36-1350(A).

<sup>16</sup> South Carolina Code §12-36-1350(B).

<sup>17</sup> South Carolina Code §12-36-30.

Tangible personal property<sup>18</sup> is personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages, or other evidences of debt.

Sale or purchase<sup>19</sup> is a transfer of title or possession of tangible personal property for a consideration. Includes rentals, leases, and license to use.

Sale at retail<sup>20</sup> means a sale of tangible personal property to an end user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a sale is not a retail sale, then it is a wholesale sale.

Purchase (sale) at retail<sup>21</sup> means a purchase of tangible personal property by the end-user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a purchase is not a retail transaction, then it is a wholesale transaction.

Gross proceeds of sales<sup>22</sup> is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

Sales price<sup>23</sup> is the measure of the use tax – it is the total amount for which tangible personal property is sold. It includes the cost of any materials, labor, interest, services or transportation that are part of the sale.

Sales price does not include:

- cash discounts allowed and taken;
- an amount charged for property when the full amount is refunded in cash or by credit;
- the value allowed for property taken as a trade-in; or
- excise taxes imposed by the federal government on retailers.

Retailer and Seller<sup>24</sup> mean every person selling or auctioning tangible personal property whether owned by the person or others, including persons operating as a marketplace facilitator, as defined in Code Section 12-36-71.

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<sup>18</sup> South Carolina Code §12-36-60.

<sup>19</sup> South Carolina Code §12-36-100.

<sup>20</sup> South Carolina Code §12-36-110.

<sup>21</sup> South Carolina Code §12-36-110.

<sup>22</sup> South Carolina Code §12-36-90.

<sup>23</sup> South Carolina Code §12-36-130.

<sup>24</sup> South Carolina Code §12-36-70.

Storage<sup>25</sup> is the keeping or retaining of tangible personal property in South Carolina that has been purchased at retail.

Use<sup>26</sup> is exercising any right or power over tangible personal property, incident to the ownership of the property, or by any transaction in which possession is given.

The terms storage and use do not include<sup>27</sup> the keeping, retaining, or exercising of any right or power over tangible personal property in South Carolina:

- for the purpose of being sold;
- for the exclusive purpose of being transported outside the state for first use; or
- for the purpose of being first manufactured, processed, or compounded into other tangible personal property for use solely outside the state.

## C. Summary of the General Use Tax Imposition

Based on the general imposition and the above definitions, the use tax, which is 6% of the total amount for which tangible personal property is sold, is imposed on:

- the use, storage, or consumption of tangible personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses;<sup>28</sup> and
- the tangible personal property was purchased, leased, rented, or otherwise obtained for a consideration at retail for use, storage, or consumption in South Carolina.

## D. Special Use Tax Impositions

South Carolina also imposes its use tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”<sup>29</sup> As “tangible personal property,” various other provisions of the sales and use tax law apply to these services and intangibles (e.g., exemptions, wholesale sales, etc.).

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<sup>25</sup> South Carolina Code §12-36-140(A).

<sup>26</sup> South Carolina Code §12-36-140(B).

<sup>27</sup> South Carolina Code §12-36-140(C). See also South Carolina Revenue Ruling #09-17.

<sup>28</sup> By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Use Tax Impositions.”

<sup>29</sup> South Carolina Code §12-36-60.



The following will address each of these “special” impositions.

### Laundry and Drycleaning Services<sup>30</sup>

The use tax, equal to 6% of the gross proceeds of sales, also applies to the use, storage, or consumption of any of the following:

- laundering services,
- dry cleaning services,
- dying services, or
- pressing services.

The tax applies to all charges related to items laundered, dry cleaned, dyed, or pressed, including but not limited to, charges for:<sup>31</sup>

- repairing,
- altering,
- storing,
- pick-up, and
- delivery.

However, charges derived from coin-operated laundromats and dry cleaning machines<sup>32</sup> are not subject to the tax. However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.<sup>33</sup>

### Electricity<sup>34</sup>

The use tax, equal to 6% of the gross proceeds of sales, also applies to the use, storage, or consumption of electricity.

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<sup>30</sup> South Carolina Code §12-36-1310(B)(1). See also, *Textile Restoration Services, Inc. v. South Carolina Department of Revenue*, 14-ALJ-17-0524-CC (2015).

<sup>31</sup> SC Regulation 117-303.

<sup>32</sup> A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

<sup>33</sup> South Carolina Revenue Ruling #88-7.

<sup>34</sup> South Carolina Code §12-36-1310(B)(2).

### Communications Services<sup>35</sup>

The use tax, equal to six percent of the gross proceeds of sales, also applies to the use, storage, or consumption of “the ways or means for the transmission of the voice or messages.”

The tax applies to charges for:<sup>36</sup>

- Telephone services,<sup>37</sup> including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP), or any of other method;
- Teleconferencing services;
- Paging services;
- Automated Answering Services,<sup>38</sup>
- Cable television services;
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services);
- Fax transmission services;
- Voice Mail Messaging Services,<sup>39</sup>
- E-mail services;
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return;
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.,<sup>40</sup>

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<sup>35</sup> South Carolina Code §12-36-1310(B)(3).

<sup>36</sup> SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

<sup>37</sup> See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

<sup>38</sup> See South Carolina Information Letter #89-28.

<sup>39</sup> See South Carolina Revenue Ruling #89-14.

<sup>40</sup> See South Carolina Private Letter Ruling #12-2, South Carolina Private Letter Ruling #10-2, and South Carolina Private Letter Ruling #07-2.

- Streaming services for television programs, movies, music, and other similar content;<sup>41</sup> and
- Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System.<sup>42</sup>

For a more detailed discussion on the use tax as it applies to communication services, see Chapter 17 of this manual.

### Manufactured Property Used by the Manufacturer<sup>43</sup>

The use tax also applies to every manufacturer when that manufacturer manufactures outside South Carolina tangible personal property for sale, but instead of selling the tangible personal property, the manufacturer brings the tangible personal property into South Carolina and uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

For example, a manufacturer that produces computers outside of South Carolina for sale throughout the world is liable for the use tax on the fair market value of any computers that it removes from its inventory and brings into South Carolina for use in any of its offices or manufacturing operations in South Carolina or to provide to its employees within South Carolina.

### Prepaid Wireless Calling Arrangements<sup>44</sup>

The use tax, equal to 6%, also applies to purchases at retail of prepaid wireless calling arrangements and to recharges at retail for prepaid wireless calling arrangements. A "prepaid wireless calling arrangement" is a communication service that:

- (1) is used exclusively to purchase wireless telecommunications,
- (2) is purchased in advance,
- (3) allows the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically, and
- (4) are sold in units or dollars which decline with use in a known amount.

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<sup>41</sup> See South Carolina Revenue Ruling #16-5 and South Carolina Private Letter Ruling #18-1.

<sup>42</sup> See South Carolina Private Letter Ruling #14-4.

<sup>43</sup> South Carolina Code §12-36-1310(B)(4).

<sup>44</sup> South Carolina Code §12-36-1310(B)(5). See also, *Unlimited Phone Store, LLC v. South Carolina Dept. of Revenue*, No. 16-ALJ-17-0399-CC (9/21/18), and SC Revenue Ruling #04-4.

For example, if a person purchases a prepaid phone card that can only be used in making wireless telephone calls, then the use, storage, or consumption of the purchased or recharged card is subject to the use tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

For a more detailed discussion on the use tax as it applies to communication services, see Chapter 17 of this manual.

### 900 and 976 Numbers<sup>45</sup>

The use tax, equal to 11% of the gross proceeds of sales, also applies to the use of a 900 telephone service, a 976 telephone service, or both.

### Transient Construction Property<sup>46</sup>

Transient construction property purchased and previously used in another state is subject to the South Carolina use tax (prorated to reflect the equipment's duration of use in South Carolina, if the other state's statute has similar provisions for proration of the tax or depreciation of the tax base) when imported or brought into this State for use, storage, or consumption in this State.

Transient construction property<sup>47</sup> is defined to mean:

motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it.

The use tax is computed as follows:

- (1) divide the length of time the property will be used in this State by the total useful life of the property;
- (2) multiply the result from (1) above by the sales price of the property;
- (3) multiply the amount in (2) above by six percent.<sup>48</sup> The result of the computation is the tax due.

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<sup>45</sup> South Carolina Code §§ 12-36-2645 and 12-36-1110.

<sup>46</sup> South Carolina Code §12-36-1320.

<sup>47</sup> South Carolina Code §12-36-150.

<sup>48</sup> Generally, the state tax rate on "transient construction property" is 6%. However, if the "transient construction property" is subject to the maximum tax provisions of South Carolina Code §12-36-2110, then

The useful life of transient construction property must be determined by the Department in accordance with the experience and practices of the building and construction trade. In the absence of satisfactory evidence as to the period of use intended in this State, it is presumed that the property will remain in this State for the remainder of its useful life. South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales or use tax paid in another state, against the use tax, on equipment previously used in another state if the out of state contractor's state will allow a similar credit.

The prorated tax credit is computed as follows:

- (1) divide the length of time the property was used in the other state by the total useful life of the property;
- (2) multiply the result from (1) above by the state sales tax legally due and paid the other state;
- (3) the lesser of the result from (2) above or the tax computed in the above paragraph is the prorated credit amount.

However, construction machinery, tools, equipment, and other construction property falling within the definition of transient construction property that is purchased for first use in South Carolina is subject to the full amount of use tax; however, such purchases qualify for a full credit<sup>49</sup> for any sales or use tax due and paid in the other state.<sup>50</sup>

## **E. Temporary Storage – Exclusion from the Use Tax<sup>51</sup>**

The use tax will not apply to the purchase at retail from outside of South Carolina of tangible personal property when such property was purchased for:

- (1) the purpose of subsequent use solely outside of South Carolina;
- (2) the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina; or

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the state tax rate in this calculation is 5%. See South Carolina Code §12-36-1110. Also, if the sale of “transient construction property” is subject to an infrastructure maintenance fee under South Carolina Code §56-3-627, no sales or use tax applies. See South Carolina Code §12-36-2120(83).

<sup>49</sup> Since the tangible personal property is purchased for first use in South Carolina, neither the use tax due nor the credit for taxes paid in the other state is prorated.

<sup>50</sup> South Carolina Code §12-36-1310(C).

<sup>51</sup> South Carolina Code §12-36-140(C).

- (3) the purpose of first being manufactured, processed, or compounded into other tangible personal property in South Carolina that will be transported and used solely outside of South Carolina.

In order for a transaction to qualify for the exclusion for temporary storage, the transaction must meet all of the following requirements:<sup>52</sup>

- (a) The tangible personal property must be purchased at retail from outside of South Carolina. Tangible personal property purchased at wholesale (e.g., extending a resale certificate to the seller) but subsequently used by the purchaser does not qualify for the exclusion for “temporary storage.”
- (b) The transaction must be a use tax transaction as described in SC Regulation 117-334.
- (c) The purchaser knew at the time of purchase that the property would be either (i) subsequently transported outside of South Carolina for first use outside of South Carolina or (ii) manufactured, processed, or compounded into other tangible personal property in South Carolina that would be transported outside of South Carolina and used solely outside of South Carolina.
- (d) The tangible personal property must be purchased for a specific use outside of South Carolina.
- (e) The first use of the tangible personal property must be outside of South Carolina, unless the first use in South Carolina was the manufacturing, processing, or compounding of that tangible personal property into other tangible personal property in South Carolina for transportation outside of South Carolina and use solely outside of South Carolina.<sup>53</sup>
- (f) The first use of the tangible personal property outside of South Carolina must be substantial and constitute the primary use for which the property was purchased.

Note: If the tangible personal property is manufactured, processed, or compounded into other tangible personal property in South Carolina for transportation and use outside of South Carolina, the property must be used exclusively outside of South Carolina and must never be returned to South Carolina.

- (g) Any person claiming the exclusion for “temporary storage” must maintain proper records that verify that all the requirements of the exclusion as set forth above have been met.

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<sup>52</sup> South Carolina Revenue Ruling #09-17.

<sup>53</sup> See South Carolina Code §12-36-140(C)(2).

The exclusion for temporary storage does not apply to sales tax transactions.<sup>54</sup>

## **F. Sales through a Marketplace Facilitator<sup>55</sup>**

A marketplace facilitator is any person engaged in the business of facilitating a retail sale of tangible personal property by:

- a. listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur **and**
- b. collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

A marketplace facilitator also includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection or processing, or in any other manner, with respect to the marketplace. See Code Section 12-36-71 for a complete definition of a marketplace facilitator.

A “marketplace” includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum. A marketplace may be physical or electronic.

A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for **all** products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

## **G. Sales to, or Purchases by, Individuals 85 Years of Age and Older<sup>56</sup>**

An individual<sup>57</sup> who is 85 years of age or older is entitled to a lower state use tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his

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<sup>54</sup> South Carolina Revenue Ruling #09-17.

<sup>55</sup> See South Carolina Revenue Ruling #19-6 and South Carolina Information Letter #19-14.

<sup>56</sup> South Carolina Code §§12-36-2620 and 12-36-2630. See also, South Carolina Revenue Ruling #18-10.

<sup>57</sup> In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations, and other legal entities.

or her own personal use.<sup>58</sup> In other words, a person who is 85 years of age or older would pay a state use tax of 5% instead of 6% (any local use taxes would still apply) on:

- (1) purchases of tangible personal property (prepared food,<sup>59</sup> clothing, furniture, appliances, etc.); and
- (2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television) as well as other communication services.

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale, and (4) that the purchaser provides the retailer with proof of age.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for the personal use of the individual purchaser who is 85 years of age or older. For example, purchases for a business use or as a gift for another individual are not entitled to the lower state use tax rate.

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<sup>58</sup> South Carolina Code §§12-36-2620 and 12-36-2630.

<sup>59</sup> Sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the 6% state sales and use tax. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. See South Carolina Code §12-36-2120(75) and SC Regulation 117-337. The federal Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, tit. IV, § 4001, 122 Stat. 1092 (2008), renamed the federal food stamp program to the Supplemental Nutrition Assistance Program (“SNAP”).



## Chapter 4

# Casual Excise Tax

### A. General Information

The casual excise tax<sup>1</sup> is imposed upon the issuance of a certificate of title or other proof of ownership for every (1) boat, (2) motor, or (3) airplane required to be registered, titled, or licensed. It applies only to the last sale before the application for title.<sup>2</sup> The casual excise tax does not apply to trailers (including boat trailers), semitrailers, or pole trailers.

Since most, but not all, of the items subject to the casual excise tax qualify for the maximum tax, the casual excise tax can be imposed at a rate of either 5% or 6%.<sup>3</sup> The tax is 5% of the “fair market value” of the airplane or boat<sup>4</sup> purchased.<sup>5</sup> However, South Carolina Code §12-36-2110 provides that the casual excise tax on sales of airplanes and boats may not exceed the \$500 maximum tax on these transactions.<sup>6</sup> In addition, since airplanes and boats are subject to the maximum tax, local taxes administered and collected by the Department on behalf of local jurisdictions are not applicable.

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<sup>1</sup> See South Carolina Code §12-36-1710 and SC Revenue Ruling #20-1.

<sup>2</sup> See South Carolina Code §§12-36-1710(A) and 12-36-1720.

<sup>3</sup> South Carolina Code §12-36-1110, which increased the casual excise tax rate as well as the sales and use tax rate from 5% to 6%, does not apply to items subject to the maximum tax provisions of South Carolina Code §12-36-2110. Therefore, items subject to the maximum tax are taxed at a state rate of 5% instead of a state rate of 6%. Specifically, South Carolina Code §12-36-1110 states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to South Carolina Code §12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to South Carolina Code §12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

<sup>4</sup> A boat sold with a motor permanently attached to it is subject to the casual excise tax at the lesser of 5% of the fair market value or \$500. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor, or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

<sup>5</sup> Any transaction subject to the maximum tax of \$500 is taxed at a state rate of 5% and is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$500 is taxed at a state rate of 6% and is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

<sup>6</sup> Act No. 40 of 2017 increased the maximum tax in South Carolina Code §12-36-2110 from \$300 to \$500 for certain enumerated items, including aircraft and boats.

The tax is 6% of the “fair market value” of a motor that is purchased alone (not permanently attached to the boat).<sup>7</sup> Local sales and use taxes are not applicable to casual excise tax transactions.<sup>8</sup>

The casual excise tax is computed on the “fair market value” which is defined as (1) the total purchase price (i.e., price agreed upon by the buyer and seller) less any trade-in allowance of the boat, motor, or airplane, or (2) the valuation shown in a national publication adopted by the Department.<sup>9</sup> The valuation shown in a national publication of used values is used only in cases of necessity, for example, when closely held stock is exchanged for a boat.

The price agreed upon by the buyer and seller, less any trade in, includes: (1) the amount of cash paid, (2) the amount of any loan assumed, (3) the value of any property exchanged, or (4) the amount paid at delinquent property tax sales.

Department of Revenue Form ST-236, “Casual or Use Excise Tax Return,” is used to compute the casual excise tax or use tax due on the transfer of a boat, motor, or airplane. The tax may be paid at the Department of Revenue or at the Department of Natural Resources when registering a boat or motor. Form ST-236 can be obtained from the Department of Revenue’s website at [dor.sc.gov](http://dor.sc.gov). Information on the Department of Natural Resources can be found at [sc.gov](http://sc.gov).

The following transfers of boats, motors, or airplanes are excluded from the casual excise tax pursuant to South Carolina Code §§12-36-1710 and 12-36-1720:

- a. transfers to members of the immediate family (i.e., spouse, parent, child, sister, brother, grandparent, and grandchild);
- b. transfers to a legal heir, legatee, or distributee;
- c. transfers from an individual to a partnership upon formation, or from a stockholder to a corporation upon formation;
- d. transfers to a licensed motor vehicle dealer or licensed motorcycle dealer for the purpose of resale;

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<sup>7</sup> South Carolina Code §12-36-1710.

<sup>8</sup> Local jurisdictions have authority to impose sales and use taxes, not casual excise taxes. See South Carolina Code §§4-10-20; 4-10-310; 4-10-420; 4-10-540; 4-10-730; and 4-10-940.

<sup>9</sup> South Carolina Code §12-36-1710(C) & (D).

- e. transfers to a financial institution for the purpose of resale;
- f. transfers to any other secured party, as a result of repossession, for the purpose of resale;
- g. transfers to the seller or secured party in partial payment (e.g., trade-ins);
- h. transfers where a sales or use tax has been paid on the transaction necessitating the transfer (this includes sales tax paid to an auctioneer licensed as a retailer);
- i. transfers of airplanes specifically exempted by South Carolina Code §12-36-2120 from the sales or use tax (see “Examples of Exempt Transfers” below);
- j. transfers that are a gift or prize; and
- k. vessels registered and documented by the United States Commissioner of Customs.<sup>10</sup>

## **B. Examples of Exempt Transfers**

Below are examples of transfers that are exempt from sales and use tax under South Carolina Code §12-36-2120 and, therefore, are exempt from the casual excise tax. These examples illustrate the more frequent methods of transferring a boat, motor, or airplane. See South Carolina Code §12-36-2120 for a complete list of exemptions.

### Sales to the Federal Government<sup>11</sup>

Sales of a boat, motor, or airplane to the federal government are exempt from sales or use taxes under South Carolina Code §12-36-2120(2) and are also exempt from the casual excise tax. When agents of the federal government purchase one of these items on behalf of the federal government, the purchase is not subject to sales and use taxes providing the credit of the agent is not advanced or risked, the purchase order discloses the purchase is made on behalf of the federal government, title to the property vests in the federal government, and the vendor is paid directly by the federal government.

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<sup>10</sup> Attorney General Opinion #83-33 (7/8/1983).

<sup>11</sup> South Carolina Code §12-36-2120(2).

### Sales by the Federal Government<sup>12</sup>

Sales of a boat, motor, or airplane by the federal government are exempt from sales and use taxes under South Carolina Code §12-36-2120(1) and exempt from the casual excise tax.

### Sales by, or Sales to, Federal Credit Unions<sup>13</sup>

Sales of a boat, motor, or airplane by, or sales of such property to, a federal credit union are exempt from sales and use taxes and the casual excise tax. See South Carolina Attorney General Opinion #S-OAG-59 (1991), which concluded that federally chartered credit unions are instrumentalities of the federal government.

### Sales of Farm Machinery<sup>14</sup>

Airplanes used in planting, cultivating or harvesting farm crops (e.g., crop dusting) are exempt from South Carolina sales and use tax and casual excise tax.

### Gifts and Prizes<sup>15</sup>

The sales and use tax and casual excise tax do not apply to property transferred as a gift or prize since there has not been a “sale” to the recipient. A gift includes a boat, motor, or airplane transferred for “love and affection.”<sup>16</sup>

### Sale of Entire Business<sup>17</sup>

The casual excise tax and sales and use tax do not apply to depreciable assets, used in the operation of a retail business when the entire business is sold by the owner, pursuant to a written contract, and the purchaser continues operation of the business. If, however, a retail business sells only a portion of its assets, then the business is liable for the sales tax due on the sale of its depreciable assets.<sup>18</sup>

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<sup>12</sup> South Carolina Code §12-36-2120(1).

<sup>13</sup> South Carolina Code §12-36-2120(1) and (2).

<sup>14</sup> South Carolina Code §12-36-2120(16).

<sup>15</sup> The exemption for gifts and prizes is authorized by South Carolina Code §12-36-1720, not §12-36-2120.

<sup>16</sup> See South Carolina Code §12-36-1720 and South Carolina Revenue Ruling #20-1.

<sup>17</sup> South Carolina Code §12-36-2120(42).

<sup>18</sup> See South Carolina Code §§12-36-1710(B)(3), 12-36-2120(42), and South Carolina Revenue Advisory Bulletin #01-1.

## **C. Sales to Individuals 85 Years of Age and Older<sup>19</sup>**

An individual<sup>20</sup> 85 years of age or older who purchases at retail an airplane or boat for his or her personal use would pay a casual excise tax rate of 4% (instead of the 5% applicable to all other persons purchasing this maximum tax item).<sup>21</sup> The 4% tax rate is applied and if the tax as calculated exceeds the \$500 maximum tax, the individual 85 years of age or older would only pay \$500.

An individual<sup>22</sup> 85 years of age or older who purchases at retail a motor that is purchased alone (not permanently attached to the boat) for his or her personal use would pay a casual excise tax rate of 5% (instead of the 6% applicable to all other persons purchasing this non-maximum tax item).<sup>23</sup>

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<sup>19</sup> South Carolina Revenue Ruling #18-10.

<sup>20</sup> In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations, and other legal entities.

<sup>21</sup> South Carolina Code §12-36-2640.

<sup>22</sup> In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations, and other legal entities.

<sup>23</sup> South Carolina Code §12-36-2640.

## Chapter 5

### Sales or Purchases at Retail

In order for the sales tax or use tax to apply to a transaction, there must be a “sale at retail” or a “purchase at retail.”

The determination of what is a sale or purchase at retail must first begin with what is a sale. A sale<sup>1</sup> is any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration.<sup>2</sup> It includes:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;<sup>3</sup>
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

In addition, it should be noted that the fact that the two parties in a sale are related entities is irrelevant.<sup>4</sup> For example, a sale can occur between a parent corporation and a wholly owned subsidiary corporation.

A “sale at retail” or “purchase at retail” is any sale of tangible personal property not defined as a wholesale sale.<sup>5</sup>

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<sup>1</sup> South Carolina Code §12-36-100.

<sup>2</sup> The sales tax and the use tax are transaction taxes in which the transfer by a retailer of tangible personal property to the end user for a consideration is subject to the tax. Consideration includes, but is not limited to, money, realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. For example, depending on the facts and circumstances of the transaction, the sales tax or the use tax may apply to such transactions as the formation of partnerships or corporations, the reorganization of corporations, and any other similar structural change in business entities, unless the transaction is otherwise exempt under the law (e.g., South Carolina Code §12-36-2120(42)).

<sup>3</sup> See also, *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971).

<sup>4</sup> See *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971) and South Carolina Private Letter Ruling #04-3.

<sup>5</sup> South Carolina Code §12-36-110.

A “wholesale sale” is essentially a sale to a licensed retailer or a wholesaler for resale and not for use or consumption.<sup>6</sup>

In summary, a retail sale is a sale to the end user or consumer.

However, the statute specifically establishes certain other sales as either wholesale or retail sales.

Specific retail sales include:

(1) Manufacturers, Processors, Compounders, Quarry Operators, or Mine Operators

sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale.<sup>7</sup>

(2) Construction Contractors

sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate.<sup>8</sup>

sales to contractors for use in the performance of construction contracts.<sup>9</sup>

the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed.<sup>10</sup>

(3) Vending Machine Operators

sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines.<sup>11</sup> The vendors are deemed to be the users or consumers of the property.<sup>12</sup>

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<sup>6</sup> South Carolina Code §12-36-120. See also, *Stanton Quilting Co., Inc. v. South Carolina Tax Commission*, 281 S.C. 133, 314 S.E.2d 844 (1984).

<sup>7</sup> South Carolina Code §12-36-110(1)(b).

<sup>8</sup> South Carolina Code §12-36-110(1)(a).

<sup>9</sup> South Carolina Code §12-36-110(1)(e).

<sup>10</sup> South Carolina Code §12-36-110(1)(d). See also, SC Revenue Ruling #94-2.

<sup>11</sup> An “honor box” is not a vending machine or its functional equivalent. See *Anonymous Taxpayer v. South Carolina Department of Revenue*, 00-ALJ-17-0137-CC (2001).

<sup>12</sup> South Carolina Code §12-36-110(1)(g).

(4) Medical Institutions, Medical Professionals, and Other Medical Transactions

sales of prepared meals, or unprepared food products used to prepare meals to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property.<sup>13</sup>

sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property.<sup>14</sup>

sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.<sup>15</sup>

sales of tangible personal property used incidental to the performance of services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.<sup>16</sup>

sales of tangible personal property, such as equipment, supplies, and medicines, to dentists for use in rendering professional services. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.<sup>17</sup>

sales of tangible personal property, such as supplies, medicines, office furniture and fixtures, and special tools and equipment, to doctors for use in the practice of their profession. It is only when a doctor has a stock of drugs from which the doctor makes numerous and substantial retail sales that the doctor is required to have a retail license and to remit sales tax directly to the Department.<sup>18</sup>

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<sup>13</sup> South Carolina Code §12-36-110(1)(h).

<sup>14</sup> South Carolina Code §12-36-110(1)(i). See also SC Regulations 117-305.1, 117-305.2, 117-305.3, and 117-305.4.

<sup>15</sup> South Carolina Code §12-36-110(1)(l).

<sup>16</sup> SC Regulation 117-308.1.

<sup>17</sup> SC Regulation 117-308.2.

<sup>18</sup> SC Regulation 117-308.3.



sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.<sup>19</sup>

#### (5) Other Professionals

sales of tangible personal property used incidental to the performance of services by lawyers, accountants, civil engineers, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.<sup>20</sup>

sales of tangible personal property, such as law books, supplies, and equipment, to lawyers.<sup>21</sup>

sales of tangible personal property to architects. Architects are not considered to be engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs and specifications. Also considered to be proceeds from the rendition of professional services are charges for the sale of these original design concepts which have been changed as a result of elevation and/or other architectural modifications to a customer's specific requirements. Sales by architects of all reproductions of such plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.<sup>22</sup>

#### (6) Other Service Businesses

sales of tangible personal property to persons engaged in the business of binding books, magazines or other printed matter belonging to another. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable. However if bookbinders bind their own printed matter and sell the finished products to users or consumers, or make and sell at retail loose-leaf binders or other articles, bookbinders must remit the tax on the entire receipts from such sales.<sup>23</sup>

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<sup>19</sup> South Carolina Code §12-36-110(1)(j).

<sup>20</sup> SC Regulation 117-308.1.

<sup>21</sup> SC Regulation 117-308.4.

<sup>22</sup> SC Regulation 117-308.6.

<sup>23</sup> SC Regulation 117-308.10.

sales of tangible personal property to a person engaged in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms or other printed matter belonging to others. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.<sup>24</sup>

sales of tangible personal property to persons practicing the art of taxidermy for use in the performance of such services.<sup>25</sup>

sales of paint, supplies, etc. to persons engaged in the business of painting automobiles.<sup>26</sup>

#### (7) Gift Transactions

sales of tangible personal property to a person who will give that tangible personal property to another person as a gift or who will award that tangible personal property to another person as a prize.<sup>27</sup>

#### (8) Coin-Operated Telephone Providers

sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin-operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service Commission. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers.<sup>28</sup>

#### (9) Withdrawals for Use

the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale,<sup>29</sup> except:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;

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<sup>24</sup> SC Regulation 117-308.10.

<sup>25</sup> SC Regulation 117-308.14.

<sup>26</sup> SC Regulation 117-308.15.

<sup>27</sup> SC Regulation 117-333. See also, South Carolina Revenue Ruling #03-3.

<sup>28</sup> South Carolina Code §12-36-110(1)(k).

<sup>29</sup> South Carolina Code §12-36-110(1)(c). See also South Carolina Revenue Ruling #08-11.

- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale;
- (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property; and
- (v) a motor vehicle operated with a dealer, transporter, manufacturer, or education license plate and used in accordance with the provisions of South Carolina Code §§56-3-2320 or 56-3-2330.

(10) Marketplace Facilitators<sup>30</sup>

sales of tangible personal property through a marketplace by a marketplace facilitator. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products. For more information on marketplace facilitators, see Code Section 12-36-71; SC Information Letter #19-14, “Marketplace Facilitator – New Law Effective April 26, 2019;” and Exhibit A, SC Revenue Ruling #19-6, “Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations.”

The law establishes certain other sales as “wholesale sales.” As such, these sales are not retail sales and are therefore not taxable. These additional “wholesale sales” are sales of:

- (1) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.<sup>31</sup>
- (2) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale.<sup>32</sup>

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<sup>30</sup> South Carolina Code §12-36-71; SC Information Letter #19-14; SC Revenue Ruling #19-6.

<sup>31</sup> South Carolina Code §12-36-120(2).

<sup>32</sup> South Carolina Code §12-36-120(3).

- (3) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.<sup>33</sup>
- (4) food or drink products to licensed retail merchants for use as ingredients in preparing ready-to-eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready-to-eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to tax.<sup>34</sup>
- (5) tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.<sup>35</sup>

Finally, operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law. This applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.<sup>36</sup>

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<sup>33</sup> South Carolina Code §12-36-120(4).

<sup>34</sup> South Carolina Code §12-36-120(5).

<sup>35</sup> South Carolina Code §12-36-110(2).

<sup>36</sup> SC Regulation 117-324.

## **Exhibit A**

### **SC Revenue Ruling #19-6: Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations**



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

**SC REVENUE RULING #19-6**

**SUBJECT:** Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations (Sales and Use Tax)

**EFFECTIVE DATE:** April 26, 2019

**REFERENCES:** S.C. Code Ann. Section 12-36-70 (2014) (Act No. 21 of 2019)  
S.C. Code Ann. Section 12-36-71 (Act No. 21 of 2019)  
S.C. Code Ann. Section 12-36-90 (2014) (Act No. 21 of 2019)  
S.C. Code Ann. Section 12-36-130 (2014) (Act No. 21 of 2019)  
S.C. Code Ann. Section 12-36-910 (2014)  
S.C. Code Ann. Section 12-36-1310 (2014)  
S.C. Code Ann. Section 12-36-1340 (2014) (Act No. 21 of 2019)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

**PURPOSE**

The purpose of this advisory opinion is to provide sales and use tax guidance to persons operating as a marketplace facilitator who operate a marketplace where tangible personal property is sold in or into South Carolina in light of the enactment of Act No. 21 of 2019, effective April 26, 2019.<sup>1</sup> In addition, this advisory opinion provides guidance to third parties whose products are sold through these marketplaces.

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<sup>1</sup> The enactment of Code Section 12-36-71 in 2019 does not represent a change in tax policy relating to South Carolina sales and use taxes. Its purpose is to further set forth and clarify South Carolina's longstanding requirement that any person engaged in business as a retailer must remit sales and use tax on every retail sale of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person (e.g., on consignment, by auction, or in any other manner).

## LAW

Code Section 12-36-910 imposes the sales tax and reads, in part:

(A) A sales tax, equal to [six]<sup>2</sup> percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310 imposes the use tax and reads, in part:

(A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]<sup>3</sup> percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-1340 describes who is required to collect use tax and reads, in part:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

\* \* \*

(3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;

\* \* \*

(5) operates as a marketplace facilitator; or

(6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.

Code Section 12-36-70 defines “retailer” and “seller,” in part, as follows:

“Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

\* \* \*

(2)(a) maintaining a place of business or qualifying to do business in this State; or

\* \* \*

(3) operating as a marketplace facilitator, as defined in Section 12-36-71.

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<sup>2</sup> See Code Section 12-36-1110 which increased the sales tax rate to 6% from 5%.

<sup>3</sup> See Code Section 12-36-1110 which increased the use tax rate to 6% from 5%.

Code Section 12-36-71 defines “marketplace facilitator” as follows:

(A)(1) “Marketplace facilitator” means any person engaged in the business of facilitating a retail sale of tangible personal property by:

(a) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and

(b) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

(2) If a person meets the criteria set forth in item (1), then that person is a marketplace facilitator regardless of whether the person receives compensation or other consideration in exchange for his services.

(B) A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

(C) For purposes of subsection (A), a marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace.

(D) When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.

## QUESTIONS AND ANSWERS

### OVERVIEW OF MARKETPLACE FACILITATOR

1. Q. Is a “marketplace facilitator” a retailer under South Carolina sales and use tax law?

A. Yes.

2. Q. What is a marketplace facilitator?

A. A marketplace facilitator is any person engaged in the business of facilitating a retail sale of tangible personal property by:

a. listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur **and**

b. collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.



A marketplace facilitator also includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection or processing, or in any other manner, with respect to the marketplace. See Code Section 12-36-71 for a complete definition of a marketplace facilitator.

3. Q. What is a “marketplace”?

- A. A “marketplace” includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum. A marketplace may be physical or electronic.

4. Q. What are examples of “marketplace facilitators”?

- A. The following businesses who list or advertise, or allow the listing or advertising of, the products of another person and collect or process payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, are examples of “marketplace facilitators.” A marketplace facilitator can sell or lease any type of product subject to sales and use tax, including sales of meals, clothing, lodging, vehicles, machinery, and equipment.

- Brick and Mortar Retailer without an Online Presence - An antique mall in South Carolina that allows third parties to display their products for sale.
- Brick and Mortar Retailer with an Online Presence - A retailer with brick and mortar locations in South Carolina that also sells its products and products owned by third parties via its website.
- Online Only Retailer - An online retailer that sells its products and products owned by third parties via its website or an online retailer that sells only products owned by third parties via its website. (See Example 1 at the end of this advisory opinion).
- Online Food Ordering, Payment, and Delivery Retailer - An online retailer that sells meals prepared by independent restaurants via its website and mobile app and delivers the meals through its independent contractors or employees. (See Example 2 at the end of this advisory opinion that illustrates the sales and use tax responsibilities of the marketplace facilitator and the third party).

5. Q. Is a marketplace facilitator responsible for remitting state and local sales and use tax for products sold via its marketplace?

- A. Yes. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

## SALES AND USE TAX OBLIGATIONS OF A MARKETPLACE FACILITATOR AND A THIRD PARTY WHOSE PRODUCTS ARE SOLD VIA A MARKETPLACE<sup>4</sup>

6. Q. What are the sales and use tax obligations of a marketplace facilitator?
- A. Since a marketplace facilitator is a retailer, a marketplace facilitator must comply with all sales and use tax obligations under South Carolina's sales and use tax law for a retailer. These obligations include obtaining a retail license, filing a return, and remitting the proper sales and use tax with respect to all products sold through its marketplace.

A marketplace facilitator, as the retailer under South Carolina's sales and use tax law, may accept from a customer an exemption certificate, a resale certificate, or other documentation claiming or substantiating a sales and use tax exemption or exclusion in the same manner as any retailer. See Code Section 12-36-2510(C) for the sellers responsibilities for acceptance of such documentation.

7. Q. Is a third party whose products are sold only through a marketplace operated by a marketplace facilitator required to obtain a retail license and remit the sales and use tax?
- A. No. Since the third party's products are sold only through a marketplace operated by a marketplace facilitator, the third party is not a retailer and, therefore, is not required to obtain a retail license or remit sales and use tax on such sales.

Note: A third party whose products are sold only through a marketplace operated by a marketplace facilitator and who currently has a South Carolina retail license does not need a retail license and should close its retail license account. See Form C-278, "Account Closing Form," for additional information. For current MyDORWAY users, the C-278 can be completed online.

8. Q. Is a third party whose products are sold through a marketplace operated by a marketplace facilitator and via its own website or retail brick and mortar store required to obtain a retail license and remit the sales and use tax?
- A. Yes. Since some of the third party's products are sold via its own website or retail brick and mortar store, the third party is a retailer and is required to obtain a retail license and remit sales and use tax with respect to sales made through its own website or retail brick and mortar store. However, the third party is not responsible for remitting the sales and use tax on its products sold through a marketplace operated by a marketplace facilitator.

Example: X sells \$250,000 of its products in South Carolina via its own website and its retail brick and mortar store. In addition, \$100,000 of its products are sold in South Carolina on a marketplace operated by a marketplace facilitator.

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<sup>4</sup> For purposes of sales and use tax obligations, the questions assume the marketplace facilitator or the third party have nexus with South Carolina.

X is a retailer only for the sales made through its own website and its retail brick and mortar store. X is, therefore, responsible for remitting sales and use tax on the \$250,000 of products sold through its website and its retail brick and mortar store. The marketplace facilitator is the retailer of all of the products sold through its marketplace and, therefore, is responsible for remitting sales and use tax on the \$100,000 of products sold through its marketplace that are owned by X.

## MARKETPLACE FACILITATOR WITHOUT A PHYSICAL PRESENCE IN SOUTH CAROLINA

9. Q. Is a marketplace facilitator without a physical presence in South Carolina (i.e., a “remote seller”) required to obtain a retail license and remit sales and use tax?
- A. Yes, provided such marketplace facilitator has economic nexus with South Carolina.
10. Q. When does a marketplace facilitator have economic nexus with South Carolina for purposes of sales and use tax?
- A. A marketplace facilitator whose gross revenue from sales of tangible personal property<sup>5</sup> (whether such property is owned by the marketplace facilitator or others), products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (i.e., substantial nexus) with South Carolina.

The \$100,000 economic nexus standard includes:

- the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and,
- the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

See Code Section 12-36-70, *South Dakota v. Wayfair, Inc.*, 585 U.S.\_\_\_\_, 138 S.Ct. 2080 (2018), and SC Revenue Ruling #18-14.

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<sup>5</sup> Code Section 12-36-60 defines “tangible personal property,” in part, as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law].” For services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

## COMPREHENSIVE EXAMPLES

The following examples address the responsibilities of the marketplace facilitator, the third party, and the calculation upon which the sales and use tax (state and local) is measured. In each example, each party has either economic nexus with South Carolina or a physical presence in South Carolina. The products are sold at retail and are not subject to any sales and use tax exemption or exclusion.

### EXAMPLE 1 - Online Retailer

#### Facts:

Company A is an online retailer who operates a website where the products it owns, and the products owned by third parties, are listed for sale at retail to customers. In some instances, once an order is placed and payment is received through Company A's website, Company A will pack the item and ship it to the customer. In other instances, once an order is placed and payment is received through Company A's website, Company A will send shipping instructions to the third party who will pull the product from its inventory and ship the product to the customer as instructed by Company A. Company A processes payments for all sales taking place through its website and remits payments to third parties for sales of their products, less a fee retained for its services.

#### Explanation of Sales and Use Tax Responsibilities:

Company A – A Marketplace Facilitator. Because Company A is a marketplace facilitator (i.e., it advertises the products of many individuals and businesses for sale on its marketplace and collects or processes payments for such products), it is responsible for obtaining a retail license, filing a sales and use tax return, and remitting the sales and use tax with respect to all taxable retail sales of products sold through its marketplace (including all taxable retail sales of items owned by third parties), regardless of whether the product is shipped by Company A or the third party.

Note: Because the sales and use tax law specifically imposes the responsibility for the tax on marketplace facilitators for all products sold through their marketplace, the legal obligation to remit the tax in this example remains with Company A, regardless of any contract provisions between Company A and the third party sellers.

Third Party 1 – Sales on Own Website and Via a Marketplace: Assume Third Party 1 is a South Carolina seller (whether an individual or a company) that makes sales of his products on his own website. He also lists his products for sale on a marketplace (Company A). Third Party 1 is only responsible for reporting and remitting South Carolina sales and use tax on sales he made via his own website. Company A, the marketplace facilitator, is responsible for reporting and remitting sales and use tax on sales of Third Party 1's products sold via the marketplace.

Third Party 2 – Sales Only Via a Marketplace: Assume Third Party 2 is a retailer located outside of South Carolina (whether an individual or a company). Sales of Third Party 2’s products in, or into, South Carolina are only made through a marketplace facilitator (Company A.) Third Party 2 is not making any retail sales in, or into, South Carolina under South Carolina law and is not a retailer. Third Party 2 is not required to obtain a retail license or collect sales and use tax. Company A, the marketplace facilitator, is responsible for reporting and remitting sales and use tax on sales of Third Party 2’s products sold via the marketplace.

## **EXAMPLE 2 - Online Food Ordering, Payment, and Delivery Retailer**

### Facts:

Company X is a national online meal ordering, payment, and delivery company. It contracts with a variety of South Carolina restaurants to sell their meals through its website and mobile app. Customers use Company X’s website or mobile app to view menu items from various restaurants and to order and pay for meals. Company X’s employees or independent contractors pick up and deliver the meals to customers. Company X collects the customer’s payment for the entire order through its website, including the cost of the meal, a delivery fee, and a service charge. Company X remits the sales price of the meal to the restaurant, less its commission on the sale, and retains the delivery fee and service charge paid. In addition to the meals sold via Company X’s marketplace, these restaurants sell meals themselves at their retail locations.

Assume in this example that Customer A orders a BBQ meal and sweet tea through Company X’s mobile app. Customer A pays the full cost of the meal (\$15), a delivery fee (\$4) and a service charge (\$1) to Company X via its mobile app. Customer B visits the same restaurant and purchases take-out meals for \$50.

### Explanation of Sales and Use Tax Responsibilities:

Company X – A Marketplace Facilitator. Since Company X is a marketplace facilitator (i.e., it advertises the meals of various restaurants for sale on its marketplace and collects or processes payments for such meals), it is responsible for obtaining a retail license, filing a sales and use tax return, and remitting the sales and use tax with respect to all meals sold through its marketplace.

The price of the meal sold, delivery fee, and service charge are included in “gross proceeds of sales”<sup>6</sup> (for sales tax) or “sales price”<sup>7</sup> (for use tax). As such, Company X must remit sales and use tax based on the entire amount paid by Customer A (\$20 in this example) since this meal was sold through Company X’s marketplace.

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<sup>6</sup> “Gross proceeds of sales” is defined in Code Section 12-36-90. Generally, “gross proceeds of sales” is the value proceeding or accruing from the sale, lease, or rental of tangible personal property and, therefore, is the total amount charged in conjunction with the sale or rental of tangible personal property, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

<sup>7</sup> “Sales price” is defined in Code Section 12-36-130. Generally, “sales price” is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

Note: Since the sales and use tax law specifically imposes the responsibility for the tax on marketplace facilitators for all products sold through their marketplace, the legal obligation to remit the tax in this example remains with Company X, regardless of any contract provisions between Company X and the restaurant.

Restaurant - Third Party. Company X has no sales and use tax responsibility for the sale of the take-out meals sold directly by the restaurant to Customer B (\$50 in this example). While the restaurant is not responsible for the remittance of the sales and use tax on any meal sold through the marketplace operated by Company X (\$20 in this example), it is responsible for the sales and use tax of meals sold by the restaurant to customers at its retail location. The restaurant is, therefore, a retailer and is required to obtain a retail license and remit sales and use tax with respect to sales made by it at its retail location (\$50 sale to Customer B in this example).<sup>8</sup>

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
\_\_\_\_\_  
W. Hartley Powell, Director

August 26 \_\_\_\_\_, 2019  
Columbia, South Carolina

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<sup>8</sup> See Code Section 12-36-2570(B) for information required on each monthly sales and use tax return.

## **Exhibit B**

### **SC Information Letter #19-14: Marketplace Facilitator – New Law Effective April 26, 2019**



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

**SC INFORMATION LETTER #19-14**

**SUBJECT:** Marketplace Facilitator – New Law Effective April 26, 2019  
(Sales and Use Tax)

**DATE:** May 7, 2019

**REFERENCE:** Act No. 21 (Enacted April 26, 2019)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
SC Revenue Procedure #09-3

**SCOPE:** An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

**NOTICE TO PERSONS OPERATING AS A MARKETPLACE FACILITATOR**

Purpose:

The purpose of this notice is to inform persons operating as a marketplace facilitator who sell tangible personal property in or into South Carolina of the requirements of the South Carolina sales and use tax law in light of the enactment by the South Carolina General Assembly of Act No. 21 of 2019, effective April 26, 2019.

Overview and Requirements of the New Marketplace Facilitator Law:

Any person who has nexus<sup>1</sup> with South Carolina and is engaged in business as a retailer must remit the sales and use tax on all retail sales of tangible personal property, unless otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

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<sup>1</sup> Economic nexus exists when a person's gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year. See SC Revenue Ruling #18-14 for guidance on economic nexus, registration, and tax remittance.



Furthermore, all internet marketplaces where a person sells tangible personal property at retail by listing or advertising, or allowing the listing or advertising of, another person's products on an online marketplace and collects or processes the payment from the customer are retailers required to remit the sales and use tax on such retail sales under the provisions of South Carolina sales and use tax law.

In enacting the new law, the General Assembly found that retailers selling another person's tangible personal property on the Internet must clearly understand and be informed of their requirements to remit the sales and use tax in the same manner as retailers selling another person's tangible personal property in a brick and mortar store.

Effective April 26, 2019, this law reinforces that a person operating as a marketplace facilitator<sup>2</sup> is a “retailer” or “seller”<sup>3</sup> under the South Carolina sales and use tax law and is responsible for remitting sales and use tax on all retail sales made via its marketplace, unless otherwise excluded or exempted from the tax. A “marketplace facilitator” is any person engaged in the business of facilitating a retail sale of tangible personal property by: (a) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and (b) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.<sup>4</sup> The person may or may not receive compensation or other consideration for his services.

As a retailer, a marketplace facilitator must have a South Carolina retail license and remit the South Carolina sales and use tax on all products sold through its marketplace, whether the product is owned by the marketplace facilitator or the product is owned by another person. A marketplace may be physical (e.g., a brick and mortar marketplace) or electronic (e.g., an online marketplace). It includes any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

#### Additional Information:

A marketplace facilitator may obtain additional information concerning the South Carolina sales and use tax laws on the Department's website ([dor.sc.gov](http://dor.sc.gov)) and may obtain a retail license via the Department's online portal ([MyDORWAY.dor.sc.gov](http://MyDORWAY.dor.sc.gov)). A marketplace facilitator without a physical presence in South Carolina should review South Carolina's economic nexus standards outlined in SC Revenue Ruling #18-14, “Retailers Without a Physical Presence (‘Remote Sellers’) – Economic Nexus,” and the Department's remote seller webpage ([dor.sc.gov/remotesellers](http://dor.sc.gov/remotesellers)).

A complete copy of the marketplace facilitator law (Act No. 21 of 2019) may be obtained from the South Carolina Legislature's website ([scstatehouse.gov](http://scstatehouse.gov)).

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<sup>2</sup> See new Code Section 12-36-71 for the definition of “marketplace facilitator.”

<sup>3</sup> See Code Section 12-36-70 (as amended by Act No. 21 of 2019) for the definition of “retailer” and “seller.” Please note a person whose products are sold exclusively through a marketplace facilitator is not a South Carolina retailer, regardless of whether the person has nexus with South Carolina. This person is not required to obtain a retail license since the marketplace facilitator is the retailer required to remit South Carolina sales and use tax.

<sup>4</sup> A marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace. When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.

## Chapter 6

### “Gross Proceeds of Sales” and “Sales Price”

“Gross proceeds of sales”<sup>1</sup> (or any similar term, such as gross proceeds) is the measure or basis for the sales tax. “Sales price” is the measure or basis for the use tax. Essentially, each term means the total amount for which tangible personal property is sold or purchased.

#### A. Gross Proceeds<sup>2</sup> and Sales Price<sup>3</sup> – What is Includable?

Gross proceeds is the basis or measure of the sales tax<sup>4</sup> and is the value proceeding or accruing from the sale, lease, or rental of tangible personal property. It includes:

- the proceeds from the sale of tangible personal property; and
- the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator.

Sales price is the basis or measure of the use tax and is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses. It includes:

- any services or transportation costs that are a part of the sale, whether paid in money or otherwise;
- any manufacturers or importers excise tax imposed by the United States; and
- the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator.

In calculating gross proceeds or sales price, the retailer may not deduct the following (whether or not such costs are passed on to the customer or separately stated on the bill to the customer):

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<sup>1</sup> South Carolina Code §12-36-90.

<sup>2</sup> South Carolina Code §12-36-90(1).

<sup>3</sup> South Carolina Code §12-36-130.

<sup>4</sup> While the term “gross proceeds” is generally applicable to the sales tax and “sales price” is generally applicable to the use tax, the term “gross proceeds” is the basis or measure of the use tax for certain services that are subject to the use tax as well as the sales tax. See South Carolina Code §12-36-1310(B).

- the cost of goods sold;
- the cost of materials, labor, or service;
- interest paid;
- losses;
- transportation costs;
- manufacturers or importers excise taxes imposed by the United States; or
- any other expenses.

One of the guiding principles of what is includable in “gross proceeds” was established in *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920 (1985). In that case, the Court of Appeals of South Carolina held the element of service involved in a layaway sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

But for the lay away sales, *Meyers Arnold* would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax. This test used by the court would also apply this principle to the use tax in determining what is includable in “sales price.”

Finally, a rebate paid by a third party (i.e., the manufacturer) to the retail customer does not affect “gross proceeds” (the basis for the sales tax) or “sales price” (the basis for the use tax). For example, if Store A sells a product for \$1,000 and the customer pays the \$1,000 for the product, the tax is still due on the \$1,000 even though the manufacturer of the product may at a later date rebate \$100 of the sales price to the customer.<sup>5</sup>

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<sup>5</sup> Attorney General Opinion #82-30 (5/5/1982).

## **B. Examples of Charges Included in “Gross Proceeds” and “Sales Price”**

Examples of charges included in “gross proceeds” or “sales price” and therefore subject to the sales tax or use tax are:<sup>6</sup>

Fuel surcharges - an additional fee charged by retailers due to the rising costs of gasoline and diesel fuel when making a delivery via their own vehicle.<sup>7</sup>

Charges by an automobile rental company,<sup>8</sup> such as:

- Fueling Charges.
- Charges for Collision Damage Waiver.
- Personal Accident Coverage.
- Extended Protection.
- Personal Effects Coverage.
- Personal Accident and Effects Coverage.

Lease cancellation fees.<sup>9</sup>

Lease compensatory damages received as a result of litigation payments from either a third party guarantor and/or lessee.<sup>10</sup>

Late fees charged when a customer does not pay his bill on time (except for late fees charged with respect to charges for electricity, natural gas, or both).<sup>11</sup>

Late fees charged by a video rental “club.”<sup>12</sup>

Membership fees paid to a video rental “club” if the payment of such fee entitles the purchaser to “free” or discount movie rentals.<sup>13</sup> However, if such fee is in lieu of a

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<sup>6</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>7</sup> South Carolina Revenue Ruling #05-1.

<sup>8</sup> South Carolina Revenue Ruling #93-1.

<sup>9</sup> South Carolina Private Letter Ruling #88-5.

<sup>10</sup> South Carolina Private Letter Ruling #12-3.

<sup>11</sup> South Carolina Revenue Ruling #09-6.

<sup>12</sup> South Carolina Revenue Ruling #90-6.

<sup>13</sup> South Carolina Revenue Ruling #90-6.

security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals, the fee is not subject to the tax.

Membership fees charged by a membership only warehouse offering a selection of brand name merchandise to business owners and others where one type of member receives a benefit that another type of membership does not receive. For example, one type of member pays only the posted wholesale price, while another type of temporary membership pays the posted wholesale price plus a 5% surcharge.<sup>14</sup>

Membership fees charged by a book retailer that entitle members to obtain discounts on their purchases of tangible personal property.<sup>15</sup>

Membership fees charged by an online shopping website that entitle members to stream digital content, free or discounted shipping on purchases of tangible personal property, and discounted pricing on purchases of tangible personal property.<sup>16</sup>

Local hospitality taxes authorized under South Carolina Code §6-1-700 *et seq.* and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act No. 138 of 1997, **if the fee or tax is imposed upon the retailer.**<sup>17</sup> (See examples below of charges not includable in gross proceeds for other local taxes and fees.)

City or county franchise fees imposed upon a cable television system and calculated as a percentage of the cable television system’s gross receipts, regardless of whether it is passed on to customers as a separately stated item on the bill or is included in the overall charge for cable services.<sup>18</sup>

Delivery or transportation charges:<sup>19</sup>

- where the seller, by use of a common carrier, effects such delivery and the sale is made F.O.B. point of destination or place of business of the buyer.<sup>20</sup>
- where the seller, by use of his own means of transportation, effects such delivery.<sup>21</sup>

<sup>14</sup> South Carolina Private Letter Ruling #92-11.

<sup>15</sup> *Books-A-Million, Inc. v South Carolina Department of Revenue*, Op. No. 5721 (S.C. Ct. App. filed April 29, 2020). Petition for Cert. filed with the South Carolina Supreme Court on August 12, 2020.

<sup>16</sup> South Carolina Private Letter Ruling #16-1.

<sup>17</sup> South Carolina Revenue Ruling #97-20.

<sup>18</sup> South Carolina Revenue Ruling #97-10.

<sup>19</sup> South Carolina Revenue Ruling #19-9.

<sup>20</sup> SC Regulation 117-310, South Carolina Revenue Ruling #19-9, South Carolina Private Letter Ruling #90-9, and Commission Decision S-D-152.

<sup>21</sup> SC Regulation 117-310, South Carolina Revenue Ruling #19-9, South Carolina Technical Advice Memorandum #89-9, Commission Decision S-D-145, and Commission Decision #92-46.

- where the seller effects delivery from the factory directly to the seller's customer when the transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from the seller's invoice.<sup>22</sup>

Fabrication labor that is a part of the manufacturing, compounding, processing, or fabrication of tangible personal property for sale or resale.<sup>23</sup>

Installation labor incident to the sale of tangible personal property when such charges are not separately stated from the sales price of the property on billing to customers or when the seller's books and records of account do not show the reasonableness of such labor in relation to the sales price of the property.<sup>24</sup>

Gratuities or an amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals, even though all or a part thereof may be paid by the retailer to his employees.<sup>25</sup>

Finance and carrying charges when the established price for the goods includes an amount to cover a finance or carrying charge.<sup>26</sup>

Lay-away Fees.<sup>27</sup>

Universal Service Fund surcharges billed by a Local Exchange Carrier, Voice over Internet Protocol provider, or Commercial Mobile Radio Service provider to its customer (part of the "gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages").<sup>28</sup>

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<sup>22</sup> SC Regulation 117-310.1 and South Carolina Revenue Ruling #19-9.

<sup>23</sup> SC Regulation 117-313.1.

<sup>24</sup> SC Regulation 117-313.3.

<sup>25</sup> SC Regulation 117-318.6. However, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, that in the latter instance, the full amount of such tip is turned over to the employee by the retailer. See also Commission Decisions S-D-82 and S-D-178.

<sup>26</sup> SC Regulation 117-318.2. However, where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds.

<sup>27</sup> *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920 (1985). See also, SC Private Letter Ruling #11-4.

<sup>28</sup> South Carolina Revenue Ruling #19-8. However, any portion of the Universal Service Fund surcharge based on charges for telecommunication services that are exempt from the sales and use tax under South Carolina Code §12-36-2120 (e.g., sales to the federal government, long distance charges, or certain access charges) or are otherwise nontaxable, are a part of the gross proceeds accruing or proceeding from the charges for an exempt service or a nontaxable charge and therefore not subject to the sales and use tax.

Early Termination Charge billed in connection with a taxable communication service (part of the “gross proceeds of sales” or “sales price” of the taxable communications service).<sup>29</sup>

Property Damage Waiver Fee billed by rental company.<sup>30</sup>

Engraving charges by a trophy shop when the charge for engraving is in conjunction with the sale of the trophy.<sup>31</sup>

Charges billed by a photographer for materials, labor, and other expenses as part of the sale of photographic transparencies and prints.<sup>32</sup>

Manufacturer’s Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents a manufacturer’s coupon valued at \$1.00, then the tax is based on \$5.00 (“gross proceeds” or “sales price”) since the retailer receives \$4.00 from the customer and \$1.00 from the manufacturer.<sup>33</sup>

Tobacco Buydowns – Buydown payments by tobacco companies to retailers that are based on a retailer’s retail sales.<sup>34</sup>

Sales Price of Returned Merchandise if the retailer does not refund the purchaser the full sales price in cash or by credit.<sup>35</sup> If a purchaser returns merchandise to the retailer and receives a refund or credit that is less than the price originally paid because the retailer retains a portion of the price paid as a “restocking” or “handling” fee or for any other reason, then the original price is subject to the tax.

Property Tax Payments under a Lease where the lease requires the lessee to reimburse the lessor for the property taxes on the tangible personal property being leased<sup>36</sup> or where the lease requires the lessee to pay the property taxes on behalf of the lessor on the tangible personal property being leased.

Rebates paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price.<sup>37</sup>

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<sup>29</sup> South Carolina Private Letter Ruling #06-2.

<sup>30</sup> Commission Decision S-D-174 and *Rent-A-Center East, Inc. v. South Carolina Department of Revenue*, 425 S.C. 582, 824 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Mar. 21, 2019), *cert. granted* (Aug. 5, 2019), *cert. dismissed as improvidently granted*, 429 S.C. 464, 839 S.E.2d 882 (2020).

<sup>31</sup> Commission Decisions #92-28, #92-9, #92-64 and #90-38.

<sup>32</sup> Commission Decision S-D-175.

<sup>33</sup> South Carolina Revenue Ruling #99-9 and Attorney General Opinion dated 4/6/1998.

<sup>34</sup> See SC Revenue Ruling #20-3 and SC Information Letter #20-35.

<sup>35</sup> SC Regulation 117-318.8.

<sup>36</sup> See Commission Decision S-D-127 (1979).

<sup>37</sup> See South Carolina Revenue Ruling #09-11 concerning the Federal “Car Assistance Rebate System” and South Carolina Revenue Ruling #10-4 concerning the “Energy Star Appliance Rebate” program.

Warranty Contracts sold in conjunction with the sale of the tangible personal property unless the sale of the tangible personal property is exempt from the tax.

Note: With limited exceptions, effective September 1, 2011, the sales and use tax no longer applies to a warranty or maintenance contract purchased after the tangible personal property is purchased.<sup>38</sup>

Monthly Fixed Charges by a Utility Company for Natural Gas sold as part of an overall agreement between the utility and the customer for the sale of natural gas, whether or not the customer uses natural gas during a particular billing period.

Note: If the sale of natural gas to the customer is exempt under Code Section 12-36-2120, such as the sale of natural gas that is used for residential purposes (Code Section 12-36-2120(33)), then the monthly fixed charges billed by a natural gas utility to a customer are not subject to the sales tax.<sup>39</sup>

Marketplace sales, consignment sales, auction sales, and other similar sales of property owned by others – Any person engaged in business as a retailer is required to remit the sales and use tax on all retail sales of tangible personal property not otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

COVID-19 surcharge or fee by a retailer as part of the sale of tangible personal property (unless the sale of the tangible personal property is otherwise exempt), such as restaurant take out charges or additional handling fees charged by the retailer.<sup>40</sup>

Charges billed by a Retailer for Consultation, Engineering, and Design as part of the retail sale of a sign<sup>41</sup> or the retail sale of a wireless communications system that enhances radio signal strength within the customer's building.<sup>42</sup>

Charges billed by a caterer as part of the retail sale of catered food for butlers, bartenders, dishwashers, overhead (e.g., alcoholic liquor liability insurance and

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<sup>38</sup> See SC Revenue Ruling #11-1.

<sup>39</sup> See SC Revenue Ruling #19-5.

<sup>40</sup> See SC Information Letter #20-23.

<sup>41</sup> SC Regulation 309.9 and SC Private Letter Ruling #07-4.

<sup>42</sup> SC Private Letter Ruling #07-3.



equipment used by the caterer), and labor charges for setting up tents, tables, dance floors, special lighting, air conditioning and heating units, and other items.<sup>43</sup>

Charges for the rental of portable toilets. The tax is based on all charges related to the rental including charges for cleaning and supplies (“gross proceeds”); however, Code Section 12-36-2120(62) provides an exemption for “seventy percent of the gross proceeds of the rental or lease of portable toilets.”<sup>44</sup>

Vehicle License Fees authorized by South Carolina Code Section 56-31-50 on rental of private passenger automobiles.

Tariffs and Tariff Surcharges charged by a retailer to its customer as part of a retail sale of tangible personal property.<sup>45</sup>

## C. Gross Proceeds and Sales Price – What is Not Includable?<sup>46</sup>

In calculating gross proceeds or sales price, the retailer may deduct the following:<sup>47</sup>

- a cash discount allowed and taken on sales;<sup>48</sup>
- the sales price of property returned by customers when the full sales price is refunded in cash or by credit;<sup>49</sup>
- the value allowed for secondhand property transferred to the vendor as a trade-in;<sup>50</sup>

<sup>43</sup> See *Tronco’s Catering, Inc. v. South Carolina Department of Revenue*, 09-ALJ-17-0089-CC (April 12, 2010) and *Hamby Catering, Inc. v. South Carolina Department of Revenue*, 08-ALJ-17-0041-CC (June 12, 2009).

<sup>44</sup> See *Eugenia Boggero, d/b/a Boggero’s Portable Toilets v. South Carolina Department of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (2015). See also SC Revenue Ruling #19-10, “Rental of Mobile Toilet Trailer, Hand Washing Station, or Portable Waste Holding Tank – Tax Exemption.”

<sup>45</sup> See SC Revenue Ruling #20-4. This revenue ruling also provides examples of tariffs not subject to tax because it was paid directly by the purchaser to the federal government.

<sup>46</sup> South Carolina Code §12-36-90(2).

<sup>47</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>48</sup> South Carolina Code §12-36-90(2)(a).

<sup>49</sup> South Carolina Code §12-36-90(2)(b) and SC Regulation 117-318.8.

<sup>50</sup> South Carolina Code §12-36-90(2)(c).

- the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes;<sup>51</sup>
- a motor vehicle operated with a dealer, transporter, manufacturer, or education license plate and used in accordance with the provisions of Code Section 56-3-2320 or 56-3-2330;<sup>52</sup>
- that portion of a charge taxed under Code Section 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit;<sup>53</sup>
- fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer;<sup>54</sup>
- the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account;<sup>55</sup>
- interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;<sup>56</sup>

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<sup>51</sup> South Carolina Code §12-36-90(2)(d).

<sup>52</sup> South Carolina Code §12-36-90(2)(e). Code Section 56-3-2320(A), which concerns the issuance and use of motor vehicle dealer license plates, was amended by Act No. 57 of 2017 to allow a dealer license plate to also be used by a person whose vehicle is being serviced or repaired by the dealership if the vehicle displaying the license plate is part of a manufacturer program and is provided by the dealer at no charge to the person. The person whose vehicle is being serviced or repaired may use a dealer license plate for no more than 30 days.

<sup>53</sup> South Carolina Code §12-36-90(2)(f).

<sup>54</sup> South Carolina Code §12-36-90(2)(g).

<sup>55</sup> South Carolina Code §12-36-90(2)(h). See also, *South Carolina Department of Revenue v. Anonymous Company A and Anonymous Company B*, 678 S.E.2d 255 (2009), and South Carolina Revenue Ruling #13-4.

<sup>56</sup> South Carolina Code §12-36-90(2)(i).

- the environmental surcharge imposed pursuant to South Carolina Code §44-56-450;<sup>57</sup>
- the alcoholic liquor by the drink excise tax imposed by South Carolina Code §12-33-245;<sup>58</sup> and
- heavy equipment rental fee imposed under South Carolina Code §56-31-60 on rental of qualified heavy equipment property to a customer by a qualified renter.<sup>59</sup>

## D. Examples of Charges not Included in “Gross Proceeds” and “Sales Price”

Examples of charges not included in “gross proceeds” or “sales price” and therefore not subject to the sales tax or use tax are:<sup>60</sup>

Late fees charged when a customer does not pay his bill on time with respect to charges for electricity, natural gas, or both;<sup>61</sup>

Membership fees paid to a video rental “club” if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals;<sup>62</sup>

Membership fees charged by a membership-only warehouse offering a selection of brand-name merchandise to business owners and others where all membership types receive the same benefits;<sup>63</sup>

Local hospitality taxes authorized under South Carolina Code §6-1-700, et seq., and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act No. 138 of 1997 **if the fee or tax is imposed**

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<sup>57</sup> South Carolina Code §12-36-90(2)(j).

<sup>58</sup> South Carolina Code §12-36-90(2)(k).

<sup>59</sup> South Carolina Code §56-31-60(D).

<sup>60</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>61</sup> South Carolina Code §12-36-90(2)(i). See also, South Carolina Revenue Ruling #09-6.

<sup>62</sup> South Carolina Revenue Ruling #90-6.

<sup>63</sup> A membership fee would be includable in gross proceeds and subject to the tax if the membership fee is the sales price for the tangible personal property. For example, if a direct mail movie rental company charged an annual or monthly fee to receive movies for short term use and no other charges are paid by the customers to receive the movies, then the annual or monthly fee is the sales price of the tangible personal property and subject to the tax.

**upon the customer and the retailer is merely a collection agent for the city or county;**<sup>64</sup>

Local accommodations taxes authorized under South Carolina Code §6-1-500, et seq.; local option sales taxes authorized under South Carolina Code §4-10-10, et seq.; local capital projects sales taxes authorized under South Carolina Code §4-10-300, et seq.; and, local transportation projects sales taxes authorized under South Carolina Code §4-37-30, et seq.;<sup>65</sup>

Delivery or transportation charges where the seller, by use of a common carrier, effects such delivery and the sale is made F.O.B. point of origin;<sup>66</sup>

Installation labor incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;<sup>67</sup>

Gratuities when given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided that in the latter instance, the full amount of such tip is turned over to the employee by the retailer;<sup>68</sup>

Finance and Carrying Charges when the seller has an established cash price and when selling on an extended payment basis adds a separate charge for financing;<sup>69</sup>

Container Deposits required by retailers to insure the return of reusable containers;<sup>70</sup>

Self-Redeeming Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents the store's self-redeeming coupon valued at \$1.00, then the sales tax is based on \$4.00 ("gross proceeds") since the retailer only receives the \$4.00 from the customer;<sup>71</sup>

911 Surcharges billed by telephone companies to their customers;<sup>72</sup>

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<sup>64</sup> South Carolina Revenue Ruling #97-20.

<sup>65</sup> South Carolina Revenue Ruling #97-20.

<sup>66</sup> SC Regulation 117-310.

<sup>67</sup> SC Regulation 117-313.3.

<sup>68</sup> SC Regulation 117-318.6.

<sup>69</sup> SC Regulation 117-318.2.

<sup>70</sup> SC Regulation 117-318.7.

<sup>71</sup> South Carolina Revenue Ruling #99-9. As noted above in "Examples of Charges included in Gross Proceeds," payments received as a result of coupons from third parties, such as manufacturers, (where the retailer will receive a payment from a third party in addition to the payment from the customer) are includable in gross proceeds and subject to the tax.

<sup>72</sup> South Carolina Code §23-47-50(C), (F) & (G); South Carolina Code §§23-47-67 and 23-47-68; SC Revenue Ruling #19-8.

Dual Party Relay Charges billed by telephone companies to their customers;<sup>73</sup>

Universal Service Fund Surcharge billed by a Prepaid Wireless seller to its customer;<sup>74</sup> and

Sales Price of Returned Merchandise if the retailer refunds the purchaser the full sales price in cash or by credit.<sup>75</sup>

## E. Gross Proceeds – Withdrawals for Use

Gross proceeds also includes the fair market value<sup>76</sup> of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it.

Tangible personal property withdrawn from inventory and used or consumed in connection with the business or used or consumed by the person withdrawing it includes, but is not limited to, tangible personal property used by the business,<sup>77</sup> given to

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<sup>73</sup> South Carolina Code §58-9-2530(A); SC Revenue Ruling #19-8.

<sup>74</sup> South Carolina Code §58-9-280(E)(2)(d)(ii).

<sup>75</sup> SC Regulation 117-318.8.

<sup>76</sup> SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

See also, *Colonial Stores, Inc. v. South Carolina Tax Commission*, 253 S.C. 14, 168 S.E.2d 774, 776 (1969), where the South Carolina Supreme Court stated:

That both parties regarded the premium merchandise as being acquired for use by Colonial rather than for resale and, hence, subject to a use tax is further evidenced by the fact that the tax was paid and collected on the basis of the cost of the premium merchandise to Colonial in accordance with Sec. [12-36-1310(A)] of the Code, rather than its reasonable market value. *A different rule of valuation applies where goods are purchased for resale but later withdrawn from stock and used by the taxpayer. In such case, the withdrawal is, in effect, treated as a sale at retail and the basis of valuation for tax purposes is "the reasonable and fair market value" of the tangible property withdrawn.* (Emphasis added)

<sup>77</sup> See South Carolina Revenue Ruling #15-1 concerning businesses that rent kayaks and paddle boards but also withdraw the same kayaks and paddle boards from inventory for use in conducting tours.

employees for their personal use, or given to employees to give away to customers or potential customers as a promotion<sup>78</sup> or for purposes of goodwill.

The imposition of the sales tax upon a withdrawal for use does not apply to:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property replacing defective parts under written warranty contracts if:
  - (A) the warranty, maintenance, service, or similar contract is given without charge at the time of original purchase of the defective property,
  - (B) the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
  - (C) the warrantee is not charged for any labor or materials;
- (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
- (v) a new motor vehicle used by a dealer as a demonstrator.

Since a withdrawal, use, or consumption of tangible personal property purchased at wholesale each constitutes a “retail sale,” any one such event occurring in South Carolina constitutes a “retail sale” within South Carolina and is subject to the tax based on the fair market value of the tangible personal property that is withdrawn, used, or consumed in connection with the business or used or consumed by the person withdrawing it.

For example:<sup>79</sup>

- (1) If tangible personal property is withdrawn from inventory in South Carolina for use or consumption inside or outside of South Carolina, then the sales tax is due based on the fair market value of the tangible personal property since the withdrawal (“retail sale”) of the tangible personal property occurred within South Carolina.

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<sup>78</sup> See also, South Carolina Private Letter Ruling #11-5.

<sup>79</sup> See South Carolina Revenue Ruling #08-11.

- (2) If tangible personal property is withdrawn from inventory outside of South Carolina for use or consumption in South Carolina and then used and consumed in South Carolina, then the use tax is due based on the fair market value of the tangible personal property since the withdrawal outside of South Carolina constitutes a “purchase at retail” and the use or consumption of the tangible personal property occurred within South Carolina.

However, a credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any sales or use tax legally due and paid in the other state on the withdrawal occurring in that state.

- (3) If tangible personal property is transferred from inventory in South Carolina to an inventory outside of South Carolina where it will be held for sale, then no sales tax is due if any tangible personal property is subsequently withdrawn, used, or consumed outside of South Carolina since a withdrawal, use, or consumption (“retail sale”) of the tangible personal property has not occurred in South Carolina. If, however, any tangible personal property is subsequently withdrawn from the inventory outside of South Carolina for use or consumption in South Carolina, see item #2 above for guidance.
- (4) If tangible personal property is transferred from inventory outside of South Carolina to an inventory in South Carolina where it will be held for sale, then no sales tax is due until the tangible personal property is either sold at retail in South Carolina or is withdrawn, used, or consumed (“retail sale”) in South Carolina.

The following charts are intended to provide examples for most taxpayers who withdraw, use, or consume tangible personal property from inventory in connection with their business or who withdraw, use, or consume tangible personal property from inventory for their personal use.<sup>80</sup>

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<sup>80</sup> These charts are also included in South Carolina Revenue Ruling #08-11.

**Situation #1 – Employee’s Personal Use:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to personally use or consume. Examples include, but are not limited to, clothing, sporting equipment, or household items the employee will wear or use or consume.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #1
The tangible personal property is withdrawn from inventory in South Carolina and given to or shipped to an employee in South Carolina for use or consumption either in South Carolina or outside of South Carolina.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and personally uses or consumes the tangible personal property either inside or outside of South Carolina.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The employee receives the tangible personal property from an inventory located outside of South Carolina and personally uses or consumes the tangible personal property in South Carolina.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina.	The taxable event is the <u>use or consumption of the tangible personal property in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.



**Situation #2 – Sent to Employee to Give Away as Promotion:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to give away free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #2
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion. The employee receives the tangible personal property and gives it away as a promotion to a customer for the customer to use or consume.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion.	The employee receives the tangible personal property outside of South Carolina and gives it away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The employee receives the tangible personal property from an inventory located outside of South Carolina and gives it away as a promotion to a customer in South Carolina for the customer to use or consume in South Carolina.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina to give away to a customer as a promotion.	The taxable event is the <u>use or consumption of the tangible personal property in South Carolina (when the employee gave it away to a customer as a promotion)</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.

**Situation #3 – Sent to Employee to Sell, but Given Away as a Promotion:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory are transferred from inventory in the store, warehouse, or distribution center to an employee outside of South Carolina. The employee maintains an inventory of tangible personal property for sale and has the authority to give away some inventory free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #3
The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee in South Carolina who maintains an inventory of tangible personal property for sale. The tangible personal property is withdrawn from the employee's inventory located in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume.	None	The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee outside of South Carolina who maintains an inventory of the tangible personal property for sale.	The tangible personal property is withdrawn from the employee's inventory located outside of South Carolina and is given away as a promotion to an out-of-state customer for the customer to use or consume outside of South Carolina.	The taxable event is the <u>withdrawal from the employee's inventory outside of South Carolina</u> . Since the withdrawal, use, and consumption of the tangible personal property occurs outside of South Carolina, <u>no sales or use tax is due</u> .
The tangible personal property is withdrawn from the employee's inventory in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.	The tangible personal property is transferred from inventory in the store or warehouse outside of South Carolina to an employee in South Carolina who maintains an inventory of the tangible personal property for sale.	The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.

**Situation #4 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will not be available for sale while being shown or displayed by the employee. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #4
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. <sup>81</sup>
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. <sup>82</sup>
The employee receives the tangible personal property from an inventory located outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The taxable event is the <u>use, consumption or storage of the tangible personal property in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. <sup>83</sup>

<sup>81</sup> The sales tax is a transactional tax. The withdrawal from inventory is a transaction subject to the sales tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

<sup>82</sup> See SC Regulation 117-309.17.

<sup>83</sup> The sales tax and the use tax are transactional taxes. The use, storage, or consumption of the tangible personal property is a transaction subject to the use tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

**Situation #5 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will be available for sale while being shown or displayed by the employee.<sup>84</sup> Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.	None	Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u> , the sales tax is due on the “gross proceeds” of the sale. <sup>85</sup>
The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.	Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u> , the sales tax is due on the “gross proceeds” of the sale. <sup>86</sup>

<sup>84</sup> The determination that tangible personal property is available for sale while being shown or displayed by an employee will be based on the facts and circumstance as supported by the taxpayer’s records. Factors to consider in making this determination include but are not limited to, the taxpayer’s operational requirements or restrictions, whether the product is subsequently discounted when sold due to use, the employees’ history of selling or not selling the samples, etc. If the facts and circumstances and the taxpayer’s records do not support that the tangible personal property is available for sale, the Department will apply the tax as set forth in Scenario #4.

<sup>85</sup> See SC Regulation 117-309.17.

<sup>86</sup> See SC Regulation 117-309.17.

**Situation #5 – Sent to Employee to Show or Display as a Sample – Continued:**

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>The employee receives the tangible personal property from outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>The tangible personal property is shipped from the distribution facility, warehouse, or retail facility outside of South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina.</p> <p>If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use, or consumption in that state.</p> <p>If <u>sold at retail in South Carolina</u>, the <u>sales tax</u> is due on the “gross proceeds” of the sale.<sup>87</sup></p>

Note: In this Scenario #5, it states that tangible personal property sent to employees as a sample to show or display to customers is not subject to the tax if the sample is still available for sale while being shown or displayed by the employee, unless “otherwise used or consumed by the employee or business in South Carolina.” Examples of samples available for sales that are “otherwise used or consumed by the employee or business in South Carolina” include, but are not limited to: (1) an employee who shows or displays the sample but also demonstrates how the product is used such as demonstrating the effectiveness of a vacuum cleaner; (2) an employee who shows and displays the sample but gives it away to the customer as a promotion or an enticement to buy the product; and (3) an employee who shows or displays the sample but also uses a sample for his own personal use. The determination as to whether samples that are available for sale are “otherwise used or consumed by the employee or business in South Carolina” will be based on the facts and circumstances.

<sup>87</sup> See SC Regulation 117-309.17  
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## **F. Gross Proceeds – Promotional Items Provided to Customers for No Consideration, a Nominal Consideration, or an Amount Significantly Below Cost**

Where tangible personal property is purchased by a retailer for resale and is transferred from the retailer to a customer for no consideration, a nominal consideration, or an amount significantly below cost, the tangible personal property is considered a promotional item withdrawn from inventory and used or consumed by the retailer.

For example, if a retailer normally sells a cell phone for \$200, but a customer can purchase the cell phone for \$0.01 by exchanging a certain number of loyalty points, then the cell phone is considered a promotional item withdrawn from inventory and used or consumed by the retailer. Thus, the amount includable in gross proceeds is \$200, the fair market value of the cell phone.

The presumption that tangible personal property sold for an amount that is a nominal consideration, or an amount that is significantly below cost, is a promotional item withdrawn from inventory and used and consumed by the retailer may be rebuttable for clearance sales, end-of-season sales, fire sales, going-out-of-business sales, two-for-one sales, and other traditional store sales where the retailer can document that the transaction is a “true” sale and not a promotional give-away.<sup>88</sup>

## **G. Gross Proceeds – Withdrawals for Use in Rental Business**

SC Regulation 117-318.4 specifically addresses retailers that rent tangible personal property and also withdraw, use, or consume the same tangible personal property, and states:

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

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<sup>88</sup> See South Carolina Private Letter Ruling #11-5.

For example, if a business rents kayaks and paddle boards and also conducts tours using the same kayaks and paddle boards, then:

- a. The rentals of the kayaks and paddle boards by the business to customers are subject to the state sales and use tax, plus any applicable local sales and use tax.
- b. The use of the same kayaks and paddle boards in providing tours is a “withdrawal for use” subject to the state sales tax, plus any applicable local sales tax. The business may elect one of two methods to pay the tax on its withdrawals for use: (i) the business may purchase all its kayaks and paddle boards at retail by paying the tax to the seller at the time of purchase or remitting the use tax directly to the Department on its purchase of the kayaks and paddle boards and no further tax is due on any future withdrawal for use of the kayaks and paddle boards when used in providing a tour; or (ii) the business may purchase all its kayaks and paddle boards at wholesale (not subject to the tax) and remit the tax on the fair market rental value of a kayak or paddle board each time it is used in providing a tour.<sup>89</sup>

Therefore, if a business rents kayaks for \$20 per hour, then all such rentals are subject to the State sales and use tax, plus any applicable local sales and use tax. When the same kayak is also used in providing a tour that costs \$100 per hour, then the sales tax is due on \$20 of each \$100 as a “withdrawal for use” of the kayak for the tour. However, if the business had elected to remit the tax to the seller or directly to the Department at the time of its purchase of the kayaks and paddle boards, then no tax would be due on the subsequent “withdrawal for use” of the kayak for each tour.<sup>90</sup>

Note: As stated in the above regulation, “[h]aving once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change.”

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<sup>89</sup> As stated in SC Regulation 117-318.4, “[h]aving once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change.”

<sup>90</sup> See SC Revenue Ruling #15-1. This revenue ruling also provides guidance with respect to businesses that only rent kayaks and paddle boards and do not conduct tours and businesses that only conduct tours and do not rent kayaks and paddle boards.

## Chapter 7

# Tangible Personal Property

### A. General Guidelines

Tangible personal property is personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.<sup>1</sup> It also includes services and intangibles the sale or use of which are subject to tax under the sales and use tax law, including

- communications,
- laundry and related services,
- furnishing of accommodations, and
- electricity.

Tangible personal property does not include stocks, notes, bonds, mortgages, or other evidences of debt or the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.<sup>2</sup>

Generally, several issues arise with respect to a transaction involving tangible personal property. For example:

- (1) Was the transaction a sale of a service or the sale of tangible personal property?
- (2) Was the transaction a sale of tangible personal property or an improvement to real property?

### B. Service vs. Sale of Tangible Personal Property

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property.

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<sup>1</sup> South Carolina Code §12-36-60.

<sup>2</sup> South Carolina Code §12-36-60.



The “true object” test is best described in 9 *Vanderbilt Law Review* 231 (1956). It states:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser’s special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The *Vanderbilt Law Review* article, in quoting *Snite v. Department of Revenue*, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays...[is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing this issue.

## C. Examples of Persons Engaged in the Business of Selling Tangible Personal Property at Retail

While the products created by these persons may involve a certain amount of personal or professional service, the “true object” of the transaction is the sale of tangible personal property.

- Photographers<sup>3</sup>
- Artists<sup>4</sup>
- Sellers of Custom-Made Items<sup>5</sup>
- Machine shops<sup>6</sup>
- Undertakers<sup>7</sup>
- Interior decorators<sup>8</sup>
- Sellers of Tax Map Sheets<sup>9</sup>
- Sellers of computer software, whether custom software or “canned” software<sup>10</sup>
- Caterers<sup>11</sup>

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<sup>3</sup> SC Regulation 117-309.2 and Commission Decisions S-D-175 and S-D-148. See also SC Revenue Ruling #15-10 for information on the application of the sales and use tax to photographs sold at retail by a photographer in tangible form (e.g., traditional print form, CD, DVD, flash drive) and electronic form (e.g., email attachment or a download from the photographer’s website).

<sup>4</sup> SC Regulation 117-309.4.

<sup>5</sup> SC Regulation 117-309.5.

<sup>6</sup> SC Regulation 117-309.6.

<sup>7</sup> SC Regulation 117-309.8.

<sup>8</sup> SC Regulation 117-309.10.

<sup>9</sup> *Richland County v. South Carolina Tax Commission*, Richland County Court of Common Pleas Case No. 82-CP-40-2143 (1983).

<sup>10</sup> *Citizens and Southern Systems, Incorporated v. The South Carolina Tax Commission*, 280 S.C. 138, 311 S.E.2d 717 (1984), SC Regulation 117-330, South Carolina Revenue Ruling #12-1; South Carolina Revenue Ruling #11-2; South Carolina Revenue Ruling #03-5. Software must be delivered in tangible form, or sold as a communication service such as an Application Service Provider (“ASP”), in order for the transaction to constitute a sale of tangible personal property subject to the tax. Software delivered electronically is not a sale of tangible personal property and therefore not subject to the tax.

<sup>11</sup> See *Tronco’s Catering, Inc. v. South Carolina Department of Revenue*, 09-ALJ-17-0089-CC (April 12, 2010) and *Hamby Catering, Inc. v. South Carolina Department of Revenue*, 08-ALJ-17-0041-CC (June 12, 2009). See also South Carolina Revenue Ruling #12-3. This advisory opinion concerns fundraisers by nonprofit organizations. However, through several of the examples contained in it, this opinion also demonstrates the Department’s longstanding position that caterers are engaged in the business of selling tangible personal property at retail.

- Renters of tangible personal property, such as businesses that rent kayaks and paddle boards<sup>12</sup>

For additional examples of persons engaged in selling tangible personal property at retail, see SC Regulation 117-308. However, it should be noted that in some of these examples, persons selling tangible personal property at retail may also be providing a separate and distinct non-taxable service that is not provided in conjunction with the sale of tangible personal property at retail.

## **D. Examples of Persons Engaged in the Business of Selling a Non-Taxable Service<sup>13</sup>**

These persons may provide their customers or clients with tangible personal property, such as a dentist providing dental implants, a lawyer preparing and providing a contract or will, and an architect preparing and providing plans, but the “true object” of the transaction is the professional or personal service. The tangible personal property is incidental to the transaction. As such, these persons do not sell tangible personal property subject to the tax, but use and consume tangible personal property such as the dental implant or paper for the contract, will or plans, in providing a non-taxable service.

- Dentists<sup>14</sup>
- Doctors<sup>15</sup>
- Lawyers<sup>16</sup>
- Veterinarians<sup>17</sup>
- Architects<sup>18</sup>
- Advertising agencies<sup>19</sup>

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<sup>12</sup> See SC Revenue Ruling #15-1. This revenue ruling also provides guidance with respect to businesses that rent kayaks and paddle boards and also conduct tours with the same kayaks and paddle boards and businesses that only conduct tours and do not rent kayaks and paddle boards.

<sup>13</sup> For purposes of this discussion, “non-taxable services” are services upon which the General Assembly has not specifically imposed the sales and use tax.

<sup>14</sup> SC Regulation 117-308.2.

<sup>15</sup> SC Regulation 117-308.3. However, if a doctor has a stock of drugs from which he makes numerous and substantial retail sales, he is required to have a retail license and to remit sales tax directly to the Department.

<sup>16</sup> SC Regulation 117-308.4.

<sup>17</sup> South Carolina Code §12-36-110(1)(l) and SC Regulation 117-308.5.

<sup>18</sup> SC Regulation 117-308.6. However, sales by architects of all reproductions of their plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.

<sup>19</sup> SC Regulation 117-308.9.

For additional examples of persons engaged in providing a non-taxable service, see SC Regulation 117-308. However, it should be noted that in some of these examples, persons providing a non-taxable service may also be selling tangible personal property.

## **E. Sale of Tangible Personal Property vs. Improvement to Real Property**

### Statutes and Regulations

In making the determination as to whether a person is a retailer making sales and installations or a contractor, the following provisions must be considered:

South Carolina Code §12-36-910(A) imposes the sales tax and reads:

A sales tax, equal to [six] percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

South Carolina Code §12-36-1310(A) imposes the use tax and reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

South Carolina Code §12-36-1340 concerns the collection of the use tax by the retailer, and states:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State;

- (5) operates as a marketplace facilitator; or
- (6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.<sup>20</sup>

South Carolina Code §12-36-70 defines the term “retailer” and provides that a “retailer” includes every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;
- (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;
- (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;
- (2)(a) maintaining a place of business or qualifying to do business in this State; or
- (b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State.
- (3) operating as a marketplace facilitator, as defined in South Carolina Code §12-36-71.<sup>21</sup>

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<sup>20</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

<sup>21</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

South Carolina Code §12-36-110 defines the term “retail sale” to mean in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

South Carolina Code §12-36-120 defines the term “wholesale sale,” in part, to mean:

a sale of . . . tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

However, South Carolina Code §12-36-110(1) further defines the term “retail sale” to include, in part:

- (a) sales of building materials<sup>22</sup> to construction contractors, builders, or landowners for resale or use in the form of real estate;

\* \* \*

- (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

- (e) sales to contractors for use in the performance of construction contracts;

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<sup>22</sup> SC Regulation 117-314.2 states:

“Building materials” when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. “Building materials” as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. “Builders,” “contractors,” and “landowners” mean and include any person, firm, association or corporation making repairs, or additions to real property. The term “building materials” includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

Finally, SC Regulation 117-324, entitled “Dual Business,” states:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.  
(Emphasis added.)

The provisions above establish two types of businesses that may deal with the incorporation of tangible personal property into real property – retailers and contractors.

In other words, any person who sells tangible personal property at retail, or who sets himself up as being engaged in selling tangible personal property at retail, is a retailer. A person who makes improvement to real property but who is not engaged in selling tangible personal property at retail is a contractor.

#### Sales and Use Tax Implications for Retailers and Contractors

Based on the above statutes and regulations, if a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased. The sales by a contractor that are isolated or accommodation sales are not subject to the sales and use tax.

If a person is deemed a retailer, then the purchases of materials for resale are not subject to the tax, but the subsequent sales at retail of such materials are subject to the tax based on the “gross proceeds of sales” or “sales price.”<sup>23</sup> However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

#### Retailer vs. Contractor Determination

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances.

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<sup>23</sup> See *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe’s Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).

Factors used in determining whether a person is a retailer making sales and installations or a contractor include, but are not limited to: how the person advertises his business (as a retailer or contractor); are retail sales made in which installation is not performed by the seller or on behalf of the seller; does the person have a showroom to display his products and how would this showroom be perceived by the general public; is the person licensed as a contractor under state law; does the person perform labor for a general contractor as a “subcontractor;” etc.

In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

#### Retailer-Contractor Making Sales and Installations

Where a person acts as both a retailer and a contractor, the following factors have been examined in determining that the taxpayer is acting as a retailer making sales and installations for particular transactions:

- (1) whether the person provides installation services to customers who have already purchased materials from somewhere else;
- (2) whether the customer purchases materials to be installed in a traditional retail transaction (i.e., the materials are selected from the tangible personal property sold by the person; the customer pays for the materials at the cash register and pays the retail sales price for the materials; and the cost of the materials is listed individually and separately from labor on the invoice);
- (3) whether the customer would perceive the transaction any different than a purchase of the identical materials in a traditional transaction; and
- (4) whether the person used a resale certificate to purchase the materials.

*See Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe’s Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).



### Retailer-Contractor Acting as Contractor

Finally, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (*e.g.*, bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer's purchases are deemed to be wholesale purchases, and the retailer's transactions with its customers will be treated as retail sales.<sup>24</sup>

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<sup>24</sup> See Chapter 6 ("Gross Proceeds of Sales" and "Sales Price"), Section E for a discussion of "withdrawals for use." See also SC Regulation 117-309.17. See also *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe's Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20), both holding the transactions in question to be retail sales and installations, rather than withdrawals for use. (Note: As discussed in Chapter 6, Section E, a withdrawal for use of tangible personal property purchased at wholesale constitutes a retail sale.) See Chapter 16 for more information on transactions involving construction contractors.

## Chapter 8

### Exclusions

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. While a transaction must squarely fall within the requirements of an exclusion in order for the tax not to apply, exclusions are liberally construed. In other words, if there is doubt as to whether a transaction falls within the requirements of an exclusion, the tax will not be imposed.

The following provides a list of the exclusions and a list of relevant court cases, regulations, and advisory opinions for each exclusion (if any). The list of court cases, regulations, and advisory opinions is not all-inclusive. The regulations and advisory opinions can be found via the Department's website ([dor.sc.gov](http://dor.sc.gov)).

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusion statute and applicable regulations, the exclusion does not apply.

<u>Code Section</u>	<u>Description</u>
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service.
12-36-90(1)(c)(iii)	The withdrawal from inventory of tangible personal property for use in replacing a defective part under a written warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and the warrantee is not charged for any labor or materials.
12-36-90(2)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes.

*SC Revenue Ruling #13-4*

<u>Code Section</u>	<u>Description</u>
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas.  <i>SC Revenue Ruling #09-6<sup>1</sup></i>
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed, or erected at the out-of-state job site.  <i>SC Revenue Ruling #94-2</i>
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.  <i>SC Revenue Procedure #08-2</i>
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale.  <i>SC Regulation 117-302.1</i>
12-36-120(3)	Sales of property “used directly” in manufacturing, compounding, or processing tangible personal property into products for sale. SC Regulation 117-302.1 provides property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.  <i>SC Regulation 117-302.1</i>

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<sup>1</sup> This exclusion does not apply to charges imposed for a late payment of a bill for other items, such as cable television or telephone service.

<u>Code Section</u>	<u>Description</u>
12-36-120(4)	<p>Sales of materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.</p> <p><i>SC Regulation 117-302.2</i></p>
12-36-120(5)	<p>Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail.</p> <p><i>SC Revenue Ruling #95-6</i></p>
12-36-140(C)(1)	<p>Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina.<sup>2</sup></p> <p><i>SC Revenue Ruling #09-17</i></p>
12-36-140(C)(2)	<p>Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina.<sup>3</sup></p> <p><i>SC Revenue Ruling #09-17</i></p>
12-36-140(C)(3)	<p>Purchases of tangible personal property for the purpose of being distributed as cooperative direct mail promotional advertising materials by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the state.<sup>4</sup></p>

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<sup>2</sup> This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

<sup>3</sup> This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

<sup>4</sup> This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

<u>Code Section</u>	<u>Description</u>
12-36-910(C)	<p>Charges for, or use of, certain data processing<sup>5</sup></p> <p><i>SC Regulation 117-329; South Carolina Revenue Ruling #17-2; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1</i></p>

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<sup>5</sup> South Carolina Code §12-36-910(C) defines “data processing” as “the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.”

## Chapter 9

### Exemptions

#### A. Exemptions Authorized under the Sales and Use Tax Law (Chapter 36 of Title 12)

The South Carolina sales and use tax law contains numerous exemptions.<sup>1</sup> As a general rule, tax exemption statutes are strictly construed against the taxpayer.<sup>2</sup> This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor.<sup>3</sup>

There are two types of exemptions provided under South Carolina's sales and use tax law: (1) partial exemptions and (2) full exemptions. The following pages briefly describe South Carolina's sales and use tax exemptions.

##### Partial Exemptions

Partial exemptions limit or "cap" the amount of tax.<sup>4</sup> The local sales and use taxes collected by the Department do not apply to sales that are subject to a limit or cap under Code Section 12-36-2110.

A maximum tax of \$500 is imposed on sales of the following:<sup>5</sup>

- Aircraft – including unassembled aircraft assembled by the purchaser
- Motor vehicles – including equipment supplied or installed on a firefighting vehicle at the time of purchase<sup>6</sup>
- Motorcycles
- Boats, including personal watercrafts such as jet skis

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<sup>1</sup> South Carolina Code §§12-36-2120 and 12-36-2130.

<sup>2</sup> *Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980); *Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al*, 276 S.C. 314, 278 S.E.2d 340 (1981).

<sup>3</sup> *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E.2d 361 (1967).

<sup>4</sup> See, e.g., South Carolina Code §12-36-2110.

<sup>5</sup> South Carolina Code §12-36-2110(A). However, certain items, such as motor vehicles and motorcycles, are subject to an infrastructure maintenance fee (instead of a sales or use tax) upon first registration with the SC Department of Motor Vehicles. See South Carolina Code §§56-3-627 and 12-36-2120(83). See also SC Information Letter #17-10 (revised). This information letter contains information concerning whether an item is subject to sales and use tax or the infrastructure maintenance fee.

<sup>6</sup> South Carolina Code §12-36-2110(E). See SC Revenue Ruling #18-12 for information on sales of fire trucks and firefighting equipment.

- Trailers and semi-trailers that can be pulled only by a truck tractor. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.<sup>7</sup>
- Horse trailers. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.
- Recreational vehicles, including tent campers, travel trailers, park trailers, motor homes, and fifth wheels
- Self-propelled light construction equipment with compatible attachments. The equipment's net engine horse power must not exceed 160.
- Fire safety education trailers

The cap also applies to leases of the above items provided the lease is in writing and the lease has a stated term and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or by installments with each lease payment until the \$500 is paid.

Also, a maximum tax of \$300 is imposed on sales of musical instruments or office equipment sold to religious organizations.<sup>8</sup>

Further, the sale of a manufactured home is subject to a maximum tax of \$300 if the home meets or exceeds certain energy efficiency requirements specifically outlined in the law.<sup>9</sup> If the home does not meet these energy efficiency requirements, the sale of the home is subject to a maximum tax of \$300 plus 2% of the taxable basis or measure that exceeds \$6,000.<sup>10</sup> (Note: The sale of a manufactured home from **July 1, 2009 through July 1, 2024** will be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.<sup>11</sup>)

See Chapter 10 of this manual for more information regarding maximum tax items.

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<sup>7</sup> Sales of utility trailers that are capable of being pulled by an automobile, minivan, or pick-up truck, and that are not recreational vehicles, fire safety education trailers or horse trailers, are not eligible for the \$500 maximum tax. See SC Revenue Ruling #14-2.

<sup>8</sup> South Carolina Code §12-36-2110(C).

<sup>9</sup> South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

<sup>10</sup> South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

<sup>11</sup> South Carolina Code §§12-36-2110(B) and 12-36-2120(34). See Act No. 354 of 2008 and Act No. 138 of 2020, Section 2.

In addition, Code Section 12-36-2120(62) provides an exemption for 70% of the gross proceeds of the rental or lease of portable toilets;<sup>12</sup> and Code Section 12-36-2120(34) exempts 50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23.<sup>13</sup>

### Full Exemptions

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code §§12-36-2120 and 12-36-2130 contain numerous full exemptions. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.<sup>14</sup>

The following briefly describes South Carolina's full sales and use tax exemptions. For purposes of this discussion, South Carolina's full exemptions are divided into the following categories:

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

The following provides a list of the full exemptions in each of the above categories and a list of relevant statutes, court cases, regulations, and advisory opinions for each exemption (if any). The list of statutes, court cases, regulations, and advisory opinions is not all-inclusive.

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<sup>12</sup> See South Carolina Revenue Ruling #09-5; *Eugenia Boggero, d/b/a Boggero's Portable Toilets v. South Carolina Department of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (2015); and SC Revenue Ruling #19-10.

<sup>13</sup> SC Regulation 117-335.2

<sup>14</sup> All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempts sales of unprepared food. See SC Regulation 117-337 and Exhibit A to Chapter 12, South Carolina Information Letter #20-2.



**Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.**

## **Government Related Exemptions**

<u>Code Section</u>	<u>Description</u>
12-36-2120(1)	<p>Transactions that are prohibited from being taxed by U.S. or state constitutional provisions or federal or state law<sup>15</sup></p> <p><i>South Carolina Information Letter #89-8 (American Red Cross); South Carolina Code §58-25-80 (Regional Transportation Authorities); South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles); South Carolina Code §44-7-2120 (Regional Health Services Districts<sup>16</sup>); South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association); South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association); South Carolina Code §12-11-30 (Banks); South Carolina Code §12-13-50 (Building and Loan Associations); South Carolina Code §13-17-90 (South Carolina Research Authority); South Carolina Code §§12-63-20 and 12-63-30 (Motion Picture Production Companies<sup>17</sup>); and South Carolina Revenue Ruling #17-2<sup>18</sup> (federal moratorium on the taxation of Internet access charges)</i></p>

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<sup>15</sup> There are several provisions in the South Carolina Code of Laws that are not codified in Chapter 36 of Title 12 that provide an exemption from the sales tax, the use tax, or both. Some of these provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. In addition, there are several provisions of federal law that provide an exemption from state and local taxes to certain specific entities. Each of these federal statutory provisions must also be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Note that the list (in italics) of transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law is not all-inclusive.**

<sup>16</sup> See also *Lexington Health Services District v. South Carolina Department of Revenue*, 384 S.C. 647, 682 S.E.2d 508 (2009).

<sup>17</sup> See also Chapter 19 of this publication and South Carolina Revenue Ruling #08-12.

<sup>18</sup> South Carolina Revenue Ruling #17-2 concerns the taxation of communications services and addresses the federal moratorium on the taxation of Internet Access charges as part of the discussion on taxable and non-taxable communication services.

<u>Code Section</u>	<u>Description</u>
12-36-2120(2)	Sales to the federal government  <i>SC Regulation 117-307.6; Attorney General Opinion dated 8/9/1984;<sup>19</sup> South Carolina Revenue Ruling #09-1; South Carolina Revenue Ruling #13-2</i>
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel  <i>South Carolina Private Letter Ruling #90-2; South Carolina Private Letter Ruling #90-11; South Carolina Private Letter Ruling #89-9; South Carolina Information Letter #17-10 (Revised)</i>
12-36-2120(29)	Federal government contracts – property that passes to the government  <i>SC Regulation 117-314.11; South Carolina Revenue Ruling #04-9</i>
12-36-2120(30)	Supplies purchased by the State General Services Division for resale to State agencies  <i>SC Regulation 117-304.1; South Carolina Revenue Ruling #92-15</i>
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies

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<sup>19</sup> This Attorney General Opinion concluded that sales to the federal government upon requisition or order of the South Carolina National Guard, payment for which is from the Federal Treasury upon order of Federal officers, are exempt from the sales and use tax. However, others sales of tangible personal property to the Guard are taxable.

<u>Code Section</u>	<u>Description</u>
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

### **Business Related Exemptions**

<u>Code Section</u>	<u>Description</u>
12-36-2120(9)(a)-(d)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors  <i>SC Regulation 117-302.3; South Carolina Private Letter Ruling #88-10</i>
12-36-2120(9)(e)-(f)	Fuel used for test flights of aircraft by the manufacturer of the aircraft or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, provided the taxpayer, over a seven year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at a single manufacturing facility. <b>This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</b>  <i>SC Information Letter #15-18</i>
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages, and automatic teller machine transactions
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas  <i>SC Regulation 117-321.1</i>
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property  <i>SC Regulation 117-302.2; SC Regulation 117-312</i>

<u>Code Section</u>	<u>Description</u>
12-36-2120(15)(a)	Motor fuel taxed under the motor fuel user fee law  <i>SC Revenue Ruling #17-3</i>
12-36-2120(15)(e)	Natural gas to be compressed or cooled for use as a motor fuel  <i>SC Revenue Ruling #17-3</i>
12-36-2120(15)(f)	Liquefied petroleum gas for use as a motor fuel  <i>SC Revenue Ruling #17-3</i>
12-36-2120(17)	<p>Machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water or noise pollution caused by machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale.</p> <p><i>SC Regulation 117-302.5; SC Regulation 117-302.6; SC Regulation 117-306.1; SC Regulation 117-309.3; SC Regulation 117-309.9; SC Regulation 117-314.10; SC Regulation 117-315.3; SC Regulation 117-328; <u>Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission</u>, 280 S.C. 426, 313 S.E.2d 300 (1984); <u>Springs Industries, Inc., v. South Carolina Department of Revenue</u>, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; <u>Anonymous Corporation v. South Carolina Department of Revenue</u> (02-ALJ-17-0350-CC); <u>Southeastern-Kusan, Inc. v. South Carolina Tax Commission</u> 276 S.C. 487, 280 S.E.2d 57 (1981); <u>Duke Energy Corp. v. South Carolina Department of Revenue</u> (12-ALJ-17-0031-CC), appeal denied on procedural grounds, South Carolina Court of Appeals, No. 2017-001260, October 30, 2017; South Carolina Revenue Ruling #04-7; South Carolina Revenue Ruling #89-7; South Carolina Revenue Ruling #91-8; South Carolina Revenue Ruling #98-19; South Carolina Private Letter Ruling #92-9; South Carolina Private Letter Ruling #91-1; South Carolina Private Letter Ruling #87-3; South Carolina Private Letter Ruling #90-3; South Carolina Private Letter Ruling #89-15; South Carolina</i></p>

<u>Code Section</u>	<u>Description</u>
	<i>Private Letter Ruling #95-8; South Carolina Private Letter Ruling #99-3; South Carolina Revenue Procedure #05-1</i> <sup>20</sup>
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale  <i>SC Regulation 117-302.4</i>
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden)  <i>SC Regulation 117-321; SC Regulation 117-321.1; SC Revenue Ruling #18-5</i>
12-36-2120(24)	Laundry supplies and machinery used by a laundry or drycleaning business. This exemption does not apply to coin operated laundromats. <sup>21</sup>  <i>SC Regulation 117-303</i>
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration  <i>The Department held in South Carolina Revenue Ruling #98-5 that accommodations provided under exchange agreements are subject to the sales tax on accommodations. However, the General Assembly subsequently enacted the above exemption for "any...exchange of accommodations in which the accommodations to be exchanged are the primary consideration."</i>

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<sup>20</sup> The controlling authorities with respect to the machine exemption are SC Regulation 117-302.5; *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (1984); *Springs Industries, Inc., v. South Carolina Department of Revenue*, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; and *Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). The advisory opinions listed are provided for additional reference.

<sup>21</sup> A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

<u>Code Section</u>	<u>Description</u>
	<i>Therefore, the furnishing of accommodations via an exchange of accommodation is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.</i>
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority
12-36-2120(42)	Depreciable assets as part of a sale of an entire business  <i>South Carolina Revenue Advisory Bulletin #01-1</i>
12-36-2120(43)	Supplies, equipment, machinery, and electricity for use in filming/producing motion pictures  <i>South Carolina Revenue Ruling #08-12<sup>22</sup></i>
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the

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<sup>22</sup> South Carolina Revenue Ruling #08-12 mainly concerns the exemption for motion picture production companies in South Carolina Code §12-63-30; however, it does briefly discuss the exemption in South Carolina Code §12-36-2120(43).

<u>Code Section</u>	<u>Description</u>
	manufacturing process, and machinery and equipment foundations <sup>23</sup>
12-36-2120(51)	<p>Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina<sup>24</sup></p> <p>(Note: Under Temporary Provisos 117.127 and 50.20, respectively, the State Ports Authority and the Navy Base Intermodal Facility are considered distribution facilities for the purpose of this exemption for state fiscal year 2020-2021)</p> <p>For purposes of this exemption, “distribution facility” includes, but is not limited to, a port facility as defined in Code Section 12-6-3375. See Code Section 12-36-2140.</p> <p><i>South Carolina Revenue Ruling #13-3</i></p>
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft (Effective January 1, 2016) <sup>25</sup>
12-36-2120(53)	Motor vehicle extended service and warranty contracts
	<i>South Carolina Revenue Ruling #11-1; South Carolina Revenue Ruling #93-6</i>
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
12-36-2120(55)	Audiovisual masters made or used by a production company

<sup>23</sup> See South Carolina Code §12-6-3460 for the definitions of “qualified recycling facility,” “recycling property,” and “postconsumer waste material.”

<sup>24</sup> This exemption requires that certain notices be filed by the taxpayer with the South Carolina Department of Revenue in order for the taxpayer to qualify for the exemption.

<sup>25</sup> Prior to January 1, 2016, this exemption was limited to parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers.

<u>Code Section</u>	<u>Description</u>
12-36-2120(56)	Machines used in research and development  <i>South Carolina Revenue Ruling #08-3</i>
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65) and 12-36-2120(66)	<p>Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility (defined in South Carolina Code §12-6-3360(M)(14)(b))<sup>26</sup> that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment</p> <p>Computer equipment used in connection with a manufacturing facility where the taxpayer, over a seven year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at the single manufacturing facility. <b>This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</b></p> <p><i>SC Information Letter #15-18</i></p>

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<sup>26</sup> South Carolina Code §12-6-3360(M)(14)(b) defines a “technology intensive facility” for purposes of this exemption as “a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).”



<u>Code Section</u>	<u>Description</u>
12-36-2120(67)	<p>Construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, that invests at least \$100 million at a single site in South Carolina over an 18-month period.</p> <p>(Note: Under Temporary Provisos 117.127 and 50.20, respectively, the State Ports Authority and the Navy Base Intermodal Facility are considered distribution facilities for the purpose of this exemption for State fiscal year 2020-2021)</p> <p>For purposes of this exemption, “distribution facility” includes, but is not limited to, a port facility as defined in Code Section 12-6-3375. See Code Section 12-36-2140.</p> <p>Construction materials used in the construction of a new or expanded single manufacturing facility where the taxpayer, over a seven-year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at the single manufacturing facility. <b>This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</b></p>
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency.
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a five year period is required.
12-36-2120(78) <sup>27</sup>	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an

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<sup>27</sup> Act No. 280 of 2010. To qualify for this exemption, the taxpayer must notify the South Carolina Department of Revenue of its intent to qualify and must invest at least twenty million dollars in real or personal property at a single site in this State over the three-year period.

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Description

organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings, provided the taxpayer invests at least twenty million dollars over a three year period.

12-36-2120(79)

Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least \$50 million in real or personal property or both over a 5 year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least \$75 million in real or personal property or both over a 5 year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce.<sup>28</sup>

This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten year period.

*South Carolina Revenue Ruling #13-5*

12-62-30

Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of news and athletic events.

*South Carolina Revenue Ruling #08-12*

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<sup>28</sup> See Code Section 12-36-2120(79) which requires that the taxpayer meet certain investment, jobs, and notification requirements in order to claim this exemption.

<u>Code Section</u>	<u>Description</u>
Temporary Proviso 109.13 (Act No. 135 of 2020)	Certain clothing required by Current Good Manufacturing Practices as set forth in 21 C.F.R. Section 111.10 used at perishable prepared food manufacturing facilities, including attire required pursuant to 21 C.F.R. Section 110.10 for persons working in direct contact with food, food contact surfaces, and food packaging materials to protect against contamination of food in perishable prepared food manufacturing facilities (for State fiscal year 2020 - 2021).

### **Agricultural Exemptions<sup>29</sup>**

<u>Code Section</u>	<u>Description</u>
12-36-2120(4)	Livestock  <i>SC Regulation 117-301.1</i>
12-36-2120(5)	Feed used to produce and maintain livestock  <i>SC Regulation 117-301.2; South Carolina Private Letter Ruling #99-1</i>
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, or seedlings, or nursery stock used in the production of farm products  <i>SC Regulation 117-301.3<sup>30</sup></i>
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin, and gum spirits of turpentine for sale  <i>SC Regulation 117-301.4</i>

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<sup>29</sup> In reviewing the exemption statutes for the agriculture industry, it should be noted that South Carolina Code §46-1-10 states:

1. The terms “agriculture, agricultural purposes, agricultural uses, farm crops, cultivated crops” or words of similar import shall include horticulture, floriculture, and aquaculture. Words of similar import applicable to agriculture are likewise applicable to horticulture, floriculture, aquaculture.
2. The term “aquaculture” means the cultivation, production, or marketing of domesticated aquatic organisms.
3. The term “domesticated aquatic organism” means any fish, aquatic invertebrate, or aquatic plant that is spawned, produced, or marketed as a cultivated crop in the waters of this State.

<sup>30</sup> See SC Revenue Ruling #16-8.

<u>Code Section</u>	<u>Description</u>
12-36-2120(15)(c)	Fuel used in farm machinery and farm tractors
12-36-2120(15)(d)	Fuel used in commercial fishing vessels
12-36-2120(16)	Farm machinery  <i>SC Regulation 117-301.5; South Carolina Revenue Ruling #99-3; South Carolina Private Letter Ruling #89-16</i>
12-36-2120(18)	Fuel used to cure agriculture products  <i>South Carolina Technical Advice Memorandum #88-6</i>
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer  <i>SC Regulation 117-301.9; South Carolina Technical Advice Memorandum #88-4; South Carolina Private Letter Ruling #93-4</i>
12-36-2120(32)	Electricity and gas used in the production of livestock and milk  <i>SC Regulation 117-301.7</i>
12-36-2120(44)	Electricity used to irrigate crops  <i>SC Regulation 117-301.7</i>
12-36-2120(45)	Building materials, supplies, fixtures, and equipment used to construct commercial housing for poultry or livestock  <i>SC Regulation 117-301.8; South Carolina Revenue Ruling #95-11; South Carolina Information Letter #95-1</i>

### **Educational Exemptions**

<u>Code Section</u>	<u>Description</u>
12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers, and access to on line information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Communication

<u>Code Section</u>	<u>Description</u>
	<p>services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.</p> <p><i>SC Regulation 117-316; South Carolina Revenue Ruling #94-11; South Carolina Private Revenue Opinion #02-3; South Carolina Technical Advice Memorandum #90-6; South Carolina Private Letter Ruling #90-5</i></p>
12-36-2120(8)	<p>Newspapers, newsprint paper, and the South Carolina Department of Agriculture Market Bulletin<sup>31</sup></p> <p><i>SC Regulation 117-315.1; SC Regulation 117-315.2; South Carolina Private Letter Ruling #98-1; South Carolina Private Letter Ruling #93-1; Attorney General Opinion dated 9/26/1983<sup>32</sup></i></p>
12-36-2120(10)(a)	<p>Meals or food used in furnishing meals to K-12 students in schools (not for profit)</p> <p><i>SC Regulation 117-305.5</i></p>
12-36-2120(26)	<p>Television, radio, and cable TV supplies, equipment, machinery, and electricity</p> <p><i>SC Regulation 117-328; South Carolina Private Letter Ruling #12-1.</i></p>
12-36-2120(27)	<p>Zoo plants and animals</p>
12-36-2130(2)	<p>Exhibition rentals for museums (charitable, eleemosynary, or governmental museums)<sup>33</sup></p>

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<sup>31</sup> This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d. 810 (1992) that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see South Carolina Information Letter #92-8.

<sup>32</sup> This Attorney General Opinion concluded that “preprints” were an integral part of a newspaper; therefore, the sale or purchase of preprints for incorporation into a newspaper were exempt.

<sup>33</sup> This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

<u>Code Section</u>	<u>Description</u>
Temporary Proviso 117.36, (Act No. 135 of 2020)	Purchases of tangible personal property during the State fiscal year 2020-2021 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the <u>use tax</u> if the school is exempt from income taxes under Internal Revenue Code §501(c)(3) <sup>34</sup>

### **General Public Good Exemptions**

<u>Code Section</u>	<u>Description</u>
12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home.

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<sup>34</sup> This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section

Description

*CareAlliance Health Services v. South Carolina Department of Revenue*, 416 S.C. 484, 787 S.E.2d 475 (2016), rehearing denied, (July 14, 2016), on remand, 12-ALJ-17-0405-AP (Nov. 2, 2016) (order dismissing only remaining legal issue of whether blood derivatives are subject to sales and use taxes); *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009); *Associated Medical Specialist, P.A. v. South Carolina Tax Commission*, SC Ct. of App., Unpublished Op. No. 97-UP-447 (1997); *Drummond v. State of South Carolina*, Court of Common Pleas, Case No. 02-CP-40-4651 (2010). SC Regulation 117-332; SC Revenue Ruling #11-3; SC Revenue Ruling #91-19; SC Revenue Ruling #90-1; SC Revenue Ruling #98-9; SC Private Letter Ruling #95-6; SC Private Revenue Opinion #01-4; SC Private Letter Ruling #92-4; SC Private Letter Ruling #05-1; SC Private Letter Ruling #93-5; SC Private Letter Ruling #04-5; SC Private Letter Ruling #05-3; SC Private Letter Ruling #03-3; SC Private Letter Ruling #88-22; SC Private Letter Ruling #92-4; SC Private Letter Ruling #92-8; SC Private Revenue Opinion #02-5

12-36-2120(33)

Residential electricity and fuel

*SC Regulation 117-323; SC Revenue Ruling #19-5; SC Revenue Ruling #89-5; SC Revenue Ruling #92-4; SC Revenue Ruling #17-1; SC Revenue Ruling #17-4; SC Technical Advice Memorandum #87-5; SC Private Letter Ruling #98-4; SC Private Letter Ruling #89-12*

12-36-2120(38)

Hearing aids<sup>35</sup>

12-36-2120(39)

Concession sales by nonprofit organizations at festivals

12-36-2120(41)

Sales by nonprofit organizations

*SC Revenue Ruling #12-3; SC Revenue Ruling #09-8; SC Revenue Procedure #03-6; SC Private Revenue Opinion #01-5*

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<sup>35</sup> Hearing aids are defined in South Carolina Code §40-25-20(5) as “an acceptable wearable instrument or device designated or offered to aid or compensate for impaired human hearing and parts, attachments, or accessories, including earmold, but excluding batteries and cords.” Therefore, separate sales of batteries or cords do not fall within this exemption and are subject to the tax.

<u>Code Section</u>	<u>Description</u>
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	<p>Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for certain clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies</p> <p><i>SC Revenue Ruling #19-4; Exhibit A to this Chapter, “South Carolina Sales Tax Holiday, Examples of Exempt and Taxable Items (Not All Inclusive)”</i></p>
12-36-2120(63)	<p>Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients</p> <p><i>SC Revenue Ruling #11-3</i></p>
12-36-2120(74)	<p>Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina. Effective January 1, 2013, sales meeting the requirements of this exemption became fully exempt from both state and local sales and use taxes.<sup>36</sup></p> <p><i>South Carolina Revenue Ruling #11-3</i></p>

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<sup>36</sup> An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of Code Section 12-36-2120(74) is fully implemented. Local sales and use taxes continued to apply until the exemption was fully implemented. Effective January 1, 2013, sales meeting the requirements of the exemption are fully exempt from both state and local sales and use taxes.



<u>Code Section</u>	<u>Description</u>
12-36-2120(75)	Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food.  <i>SC Regulation 117-337; SC Revenue Ruling #07-4<sup>37</sup></i>
12-36-2120(76)	This exemption is no longer valid. <sup>38</sup>
12-36-2120(77)	This exemption is no longer valid. <sup>39</sup>
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. <sup>40</sup>  <i>SC Information Letter #14-4</i>

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<sup>37</sup> SC Revenue Ruling #16-8 clarifies that this exemption includes sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants to individuals to grow food in a home garden for personal use and consumption.

<sup>38</sup> On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120(76), which established an annual sales tax holiday on the Friday and Saturday after Thanksgiving for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns, was unconstitutional. *The American Petroleum Institute and BP Products North America Inc. v. South Carolina Department of Revenue, et al.*, 382 S.C. 572, 677 S.E.2d 16 (2009). However, the General Assembly enacted a temporary proviso that established a sales tax holiday on November 26<sup>th</sup> and 27<sup>th</sup> of 2010 for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns.

<sup>39</sup> In 2008, the General Assembly enacted in South Carolina Code §12-36-2120(77) an annual sales tax holiday during October (beginning in 2009 and ending 2018) for certain energy efficient products (provided certain revenue growth forecasts were met). However, on May 4, 2009, the Supreme Court of South Carolina held in *The American Petroleum Institute and BP Products North America, Inc. v. South Carolina Department of Revenue, et al.*, 382 S.C. 16, 677 S.E.2d 16 (2009) that the act (Act No. 338 of 2008) was unconstitutional. Therefore, the exemption in South Carolina Code §12-36-2120(77) is no longer valid.

<sup>40</sup> This exemption was phased-in based on the annual general fund growth as determined by the Board of Economic Advisors (“BEA”). On February 19, 2014, the BEA notified the Department that the requirements were met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases were exempt from the State and local sales and use taxes. Qualifying sales or purchases made on or after July 1, 2015 are fully exempt from the State and local sales and use taxes. See SC Information Letter #14-4. When completing the Sales and Use Tax Return (ST-3), a taxpayer will reflect sales or purchases qualifying for this exemption on “the worksheet” under the “Allowable Deductions” section. The taxable gross proceeds after all deductions will be subject to both the State and applicable local sales and use taxes.

<u>Code Section</u>	<u>Description</u>
12-36-2120(81)	Construction material used by an entity organized under Section 501(c)(3) of the Internal Revenue Code as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. An “individual or family in need” means an individual or family, as applicable, whose income is less than or equal to 80% of the county median income. (Effective January 1, 2016).
12-36-2120(82)	Children’s clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the purpose of distribution by that organization to needy children. “Clothing” means those items exempt from sales and use tax pursuant to Code Section 12-36-2120(57)(a)(i) and (ii). “Needy children” means children eligible for free meals under the National School Lunch Program of the US Department of Agriculture. (Effective January 1, 2016).
12-36-2120(83)	Any item which is subject to the infrastructure maintenance fee set forth in South Carolina Code Section 56-3-627.  <i>SC Information Letter #17-10 (Revised); SC Revenue Ruling #18-1; SC Revenue Ruling #18-11</i>
Temporary Proviso 117.60 (Act No. 135 of 2020)	Viscosupplementation therapies (for State fiscal year 2020-2021).

### **Alternative Energy Exemptions**

<u>Code Section</u>	<u>Description</u>
12-36-2120(71)	Any device, equipment, or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies. This exemption is effective October 1, 2007.
12-36-2120(72)	Building material used to construct a new or renovated building in a research district and machinery or equipment located in a

<u>Code Section</u>	<u>Description</u>
	research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase. This exemption is effective October 1, 2007.
12-36-2110(B)	Manufactured homes designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy efficiency requirements or designated as meeting or exceeding the energy efficiency requirements under each agency's Energy Star program. <sup>41</sup>

## B. Other Sales and Use Tax Exemptions Authorized by the General Assembly

In addition to the sales and use tax exemptions authorized by the General Assembly in the sales and use tax law,<sup>42</sup> the General Assembly has authorized sales and use tax exemptions in other provisions of the South Carolina Code of Laws. While the code sections authorizing these exemptions are listed above under the exemption for "Transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law," the following will provide additional details about these exemptions.

Some of these exemption provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Please note that the list of transactions that are prohibited from being taxed by state law is not all-inclusive.**

**Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.**

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<sup>41</sup> This exemption is only valid for sales or purchases from July 1, 2009 through July 1, 2024. See Act No. 354 of 2008 and Act No. 138 of 2020, Section 2. Manufactured homes not meeting the energy efficiency requirements for this exemption, but meeting other energy efficiency requirements in South Carolina Code §12-36-2110(B), will only be subject to the \$300.00 maximum tax.

<sup>42</sup> Chapter 36 of Title 12 of the South Carolina Code of Laws.

South Carolina Code §58-25-80 (Regional Transportation Authorities)

This exemption provides that a regional transportation authority shall not pay any sales tax or use tax. In addition, it provides that a regional transportation authority shall not pay any state or local ad valorem tax, income tax, fuel tax, excise tax or any other use taxes or taxes from which municipalities and counties are exempt.<sup>43</sup>

South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles)

This exemption provides that vehicles that have been declared a total loss and are transferred to or from an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes.<sup>44</sup>

South Carolina Code §44-7-2120 (Regional Health Services Districts)

This exemption provides that the gross proceeds of the sale of any property owned by a regional health services district and used in the construction and equipment of any health care facilities for a district is exempt from the sales taxes and all similar excise taxes. In addition, the exemption provision states that it is the intent of the General Assembly that a regional health services district incur no tax liability to the State or any of its political subdivisions except to the extent that sales and use taxes may be payable on the purchases of goods or equipment by the regional health services district.<sup>45</sup>

This provision also provides exemptions for other taxes. See the code section for details.

South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association)

This provision exempts the South Carolina Life and Accident and Health Insurance Guaranty Association from payment of all fees and all state, county, and municipal taxes.

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<sup>43</sup> See 1985 Op. Atty. Gen. No. 85-120, p. 329.

<sup>44</sup> See SC Revenue Ruling #93-13.

<sup>45</sup> See also *Lexington Health Services District v. South Carolina Department of Revenue*, 384 S.C. 647, 682 S.E.2d 508 (2009).

South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association)

This provision exempts the South Carolina Property and Casualty Insurance Guaranty Association from payment of all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property.

South Carolina Code §12-11-30 (Banks)

This provision provides that the income tax paid by banks<sup>46</sup> is in lieu of all other taxes on banks, except the use tax, the deed recording fee, and taxes on real property. The real property of a bank is taxed in the place where it is located.

South Carolina Code §12-13-50 (Building and Loan Associations)

This provision provides that the income tax paid by building and loan associations<sup>47</sup> shall be in lieu of any and all other taxes on such associations, except use taxes, deed recording fees, and taxes on real property. The real property of any such association shall be taxed in the place where it may be located, the same as the real property of individuals.

South Carolina Code §13-17-90 (South Carolina Research Authority)

This provision states that the South Carolina Research Authority shall pay no taxes or assessments including, but not limited to, income tax, sales and use tax, and property tax upon any of the property acquired by it or upon any of its activities; except that the South Carolina Research Authority is entitled to the above-referenced sales and use tax exemption only in (1) transactions to obtain tangible personal property for the authority's own use or consumption, (2) transactions related to authority contracts with governmental entities and nonprofit entities, and (3) transactions related to authority contracts with private, for-profit entities doing business in South Carolina, where these contracts do not place these entities in competition with other private, for-profit entities doing business in South Carolina.

South Carolina Code §12-62-30 (Motion Picture Production Companies)<sup>48</sup>

Code Section 12-62-30 exempts sales to, or purchases by, a qualifying motion picture production company from sales and use taxes on purchases expended in South Carolina in connection with the filming or production of motion pictures in South Carolina.

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<sup>46</sup> Chapter 11 of Title 12 of the South Carolina Code of Laws.

<sup>47</sup> Chapter 13 of Title 12 of the South Carolina Code of Laws.

<sup>48</sup> See also Chapter 19 of this publication and SC Revenue Ruling #08-12.

South Carolina Code §12-69-30 (Motorsports Entertainment Complex)

Chapter 69 of Title 12 provides an exemption from state and local sales tax for the construction, repair, or improvement of a motorsports entertainment complex, if at least a \$10 million capital investment is made within the five-year period immediately following approval of the application.

## **Exhibit A**

### **South Carolina Sales Tax Holiday Examples of Exempt and Taxable Items (Not All Inclusive)**

The most current version of this list, as of the date of this publication, is in South Carolina Revenue Ruling #19-4. This ruling can be found on the Department's website ([dor.sc.gov](http://dor.sc.gov)).

# SOUTH CAROLINA SALES TAX HOLIDAY

## Examples of Exempt and Taxable Items (Not All Inclusive)

(See Code Section 12-36-2120(57) and SC Revenue Ruling #19-4.)

<b>I. CLOTHING and CLOTHING ACCESSORIES</b>		
<b>The tax holiday applies to purchases of new or used clothing and clothing accessories for use by any age and of any dollar amount. It does not apply to clothing and accessories used in a trade or business or rented.</b>		
<b>Examples of Exempt Items</b>		
<ul style="list-style-type: none"> <li>◆ Everyday                             <ul style="list-style-type: none"> <li>Belts &amp; suspenders</li> <li>Dresses &amp; skirts</li> <li>Leggings</li> <li>Neckties &amp; scarves</li> <li>Pants, jeans &amp; shorts</li> <li>Shirts &amp; blouses</li> <li>Suits &amp; blazers</li> <li>Sweaters &amp; sweatshirts</li> </ul> </li> <li>◆ Outer Wear                             <ul style="list-style-type: none"> <li>Coats (all types)</li> <li>Ear muffs</li> <li>Gloves &amp; mittens</li> <li>Hats &amp; caps</li> <li>Rainwear &amp; umbrellas</li> <li>Vests</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ School Wear                             <ul style="list-style-type: none"> <li>Graduation caps &amp; gowns</li> <li>Gym suits</li> <li>Uniforms (band, school &amp; sports)</li> </ul> </li> <li>◆ Sleepwear</li> <li>◆ Underwear                             <ul style="list-style-type: none"> <li>Bras, panties, slips, &amp; T-shirts</li> <li>Diapers (cloth &amp; disposable)</li> <li>Hosiery, socks &amp; tights</li> <li>Incontinent underwear</li> </ul> </li> <li>◆ Sports/Exercise Wear                             <ul style="list-style-type: none"> <li>Exercise clothing</li> <li>Gloves (batting &amp; golf)</li> <li>Hunting &amp; ski clothing</li> <li>Leotards</li> <li>Swim wear &amp; water apparel</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Miscellaneous/Specialty                             <ul style="list-style-type: none"> <li>Belt buckles</li> <li>Bibs</li> <li>Choir robes</li> <li>Costumes</li> <li>Fabric for custom clothing</li> <li>Formal wear</li> <li>Hair accessories &amp; wigs</li> <li>Handkerchiefs</li> <li>Maternity clothing</li> <li>Pet coats &amp; sweaters</li> <li>Pocketbooks &amp; purses</li> <li>Scout uniforms</li> <li>Work uniforms purchased by the employee</li> </ul> </li> </ul>
<b>Examples of Taxable Items</b>		
<ul style="list-style-type: none"> <li>◆ Clothing Placed on Layaway</li> <li>◆ Costume Rentals</li> <li>◆ Formal Wear Rentals</li> <li>◆ Safety Equipment (hard hats &amp; ear protectors)</li> <li>◆ Uniforms Purchased by Employers for Employees</li> </ul>	<ul style="list-style-type: none"> <li>◆ Sports Equipment                             <ul style="list-style-type: none"> <li>Helmets (bicycle &amp; football)</li> <li>Hockey &amp; baseball mitts</li> <li>Protective wear (masks, mouth guards, knee pads &amp; swim goggles)</li> <li>Life jackets</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Miscellaneous/Specialty                             <ul style="list-style-type: none"> <li>Cosmetics</li> <li>Eyewear (contacts &amp; glasses)</li> <li>Fitness tracking devices</li> <li>Jewelry</li> <li>Phone cases</li> <li>Wallets &amp; billfolds</li> <li>Watchbands</li> <li>Watches &amp; smartwatches</li> </ul> </li> </ul>

<b>II. FOOTWEAR</b>		
<b>The tax holiday applies to purchases of new or used footwear for use by any age and of any dollar amount. It does not apply to footwear used in a trade or business or rented.</b>		
<b>Examples of Exempt Items</b>		
<ul style="list-style-type: none"> <li>◆ Everyday                             <ul style="list-style-type: none"> <li>Boots (cowboy &amp; hunting)</li> <li>Flip flops</li> <li>Sandals</li> <li>Shoes (all types)</li> <li>Slippers</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Sports/Exercise                             <ul style="list-style-type: none"> <li>Cleats</li> <li>Dance shoes (ballet &amp; tap)</li> <li>Hiking shoes &amp; boots</li> <li>Sports shoes (golf &amp; bicycle)</li> <li>Ski boots</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Miscellaneous/Specialty                             <ul style="list-style-type: none"> <li>Diabetic shoes</li> <li>Orthopedic shoes</li> <li>Rain boots &amp; over shoes</li> <li>Skates (ice &amp; in-line)</li> </ul> </li> </ul>
<b>Examples of Taxable Items</b>		
<ul style="list-style-type: none"> <li>◆ Bowling Shoe Rentals</li> <li>◆ Shoes Placed on Layaway</li> </ul>	<ul style="list-style-type: none"> <li>◆ Footwear Accessories                             <ul style="list-style-type: none"> <li>Shoe inserts</li> <li>Shoe laces</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Work/Safety Shoes Provided to Employees by the Employer</li> </ul>

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III. SCHOOL SUPPLIES		
<b>The tax holiday applies to purchases of “school supplies” used in the classroom or at home for school assignments of any dollar amount, whether purchased or leased.</b>		
<b>Examples of Exempt Items</b>		
<ul style="list-style-type: none"> <li>◆ Art Supplies</li> <li>◆ Book Bags &amp; Backpacks</li> <li>◆ Binders</li> <li>◆ Books</li> <li>◆ Calculators</li> <li>◆ Calendars</li> <li>◆ Compasses &amp; Protractors</li> <li>◆ Computer Bags</li> <li>◆ Computer Supplies (earbuds, headphones, stylus &amp; flash drives)</li> </ul>	<ul style="list-style-type: none"> <li>◆ Crayons</li> <li>◆ Erasers</li> <li>◆ Folders</li> <li>◆ Glue &amp; Glue Sticks</li> <li>◆ Highlighters</li> <li>◆ Index Cards</li> <li>◆ Lunch boxes</li> <li>◆ Markers</li> <li>◆ Music Instruments Used for School Assignments (including rentals)</li> </ul>	<ul style="list-style-type: none"> <li>◆ Music Supplies (sheet music)</li> <li>◆ Notebooks</li> <li>◆ Paper (typing, graph, construction &amp; poster board)</li> <li>◆ Pencil Sharpeners</li> <li>◆ Pencils &amp; Pencil Cases</li> <li>◆ Pens</li> <li>◆ Rulers</li> <li>◆ Scissors</li> <li>◆ Stapler &amp; Staples</li> <li>◆ Tape</li> </ul>
<b>Examples of Taxable Items</b>		
<ul style="list-style-type: none"> <li>◆ Backpacks for camping</li> <li>◆ Batteries</li> <li>◆ Bicycles</li> <li>◆ Briefcases</li> <li>◆ Cleaning Supplies</li> </ul>	<ul style="list-style-type: none"> <li>◆ Clocks</li> <li>◆ Dorm Supplies (housewares, refrigerator &amp; toiletries)</li> <li>◆ Furniture (desks &amp; bookcases)</li> <li>◆ Hand Sanitizers &amp; Tissues</li> </ul>	<ul style="list-style-type: none"> <li>◆ Office Supplies</li> <li>◆ Smartphones &amp; Cell Phones</li> <li>◆ Stationery</li> <li>◆ Strollers &amp; Car Seats</li> <li>◆ Toys</li> </ul>

IV. COMPUTERS, COMPUTER SOFTWARE, PRINTERS, AND PRINTER SUPPLIES		
The tax holiday applies to computers, computer software, printers, and printer supplies of any dollar amount, whether purchased or leased. It does not apply to items used in a trade or business.		
Examples of Exempt Items		
◆ Computers & Computer Software Computer supplies (monitor, keyboard, mouse, & speakers) when sold as a package with a central processing unit (CPU) Laptop, desktop, or tablet computer systems having a CPU Warranty and service agreements	◆ Printers & Printer Supplies Cartridges Printers Printer Inks Printer Papers Toners	
Examples of Taxable Items		
◆ Computer Supplies Sold Separately (mouse & keyboard) for Business Use (see “school supply” examples of exempt items) ◆ Computers Used in a Business	◆ E-readers ◆ Music & Video Players ◆ Phone Chargers ◆ Replacement Parts	◆ Scanners ◆ Smartphones & Phones ◆ Televisions ◆ Video Game Consoles

V. BED AND BATH SUPPLIES	
<b>The tax holiday applies to bed and bath supplies for use by any age and of any dollar amount. It does not apply to items used in a trade or business.</b>	
<b>Examples of Exempt Items</b>	
<ul style="list-style-type: none"> <li>◆ <b>Bath</b> Mats &amp; rugs Shower curtains &amp; liners Towels &amp; wash cloths (bath, beach, kitchen &amp; sport towels)</li> </ul>	<ul style="list-style-type: none"> <li>◆ <b>Bedding</b> Bed skirts Bed spreads &amp; comforters Blankets &amp; throws Bumper pads &amp; crib linens Mattress pads &amp; toppers Pillows (all types) Sheets &amp; pillow cases</li> </ul>
<b>Examples of Taxable Items</b>	
<ul style="list-style-type: none"> <li>◆ <b>Bath (Miscellaneous)</b> Accessories (soap dish, towel holder, shower curtain rings &amp; rod) Cleaning supplies Toiletries Trashcans</li> </ul>	<ul style="list-style-type: none"> <li>◆ <b>Bed (Miscellaneous)</b> Dorm items (ironing boards, rugs, clothes racks, hangers, storage containers &amp; lamps) Furniture (bed frames, cribs &amp; chairs) Mattresses &amp; box springs Sleeping bags Window treatments</li> </ul>

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## Chapter 10

### Maximum Tax Items

#### A. General Information

##### Infrastructure Maintenance Fee:

This chapter concerns items that are subject to a maximum tax under South Carolina Code §12-36-2110. Please note, however, Act No. 40 of 2017 imposed a new infrastructure maintenance fee beginning July 1, 2017, and any sale or purchase of an item that is subject to this fee is exempt from state and local sales and use tax and the casual excise tax. See South Carolina Code §12-36-2120(83). As a result, certain transactions that were subject to a maximum sales, use, or casual excise tax prior to July 1, 2017 are now instead subject to an infrastructure maintenance fee remitted to the SC Department of Motor Vehicles (SCDMV).

SC Information Letter #17-10 (Revised) contains charts providing the applicable infrastructure maintenance fee rate, sales and use tax rate, or casual excise tax rate for a number of items purchased by residents, nonresidents, and military personnel. This information letter is reproduced for reference as Exhibit A of this chapter. For questions regarding the new infrastructure maintenance fee remitted to the SCDMV, please contact the SCDMV at [cartaxes@scdmv.net](mailto:cartaxes@scdmv.net).

##### Maximum Tax:

The sales, use and casual excise taxes are imposed at the rate of 5%<sup>1</sup> for the sale or lease of tangible personal property subject to a maximum tax. Local taxes administered and collected by the Department on behalf of local jurisdictions do not apply to the sale or lease of tangible personal property subject to a maximum tax.

##### Maximum Tax Applies to:

(A) A maximum tax of \$500 is established for each sale<sup>2</sup> or lease<sup>3</sup> of each:<sup>4</sup>

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<sup>1</sup> The provisions of South Carolina Code §12-36-1110 which increased the sales and use tax rate and the casual excise tax rate from 5% to 6% effective June 1, 2007 do not apply to the sale or lease of tangible personal property subject to the maximum tax.

<sup>2</sup> The maximum tax only applies for each sale made after June 30, 1984.

<sup>3</sup> The maximum tax only applies for each lease executed after August 31, 1985.

<sup>4</sup> South Carolina Code §12-36-2110(A), as amended by Act No. 40 of 2017. Effective July 1, 2017, Act No. 40 increased the maximum tax from \$300 to \$500 for certain enumerated items.

- motor vehicle (“Low speed vehicles” that meet the requirements of South Carolina Code §§56-2-110 through 56-2-130 are subject to the \$500 maximum tax.);<sup>5</sup>
- motorcycle (on-road or off-road);
- recreational vehicle, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- boat<sup>6</sup> (The sale of personal watercraft, such as a jet ski,<sup>7</sup> and a barge<sup>8</sup> are each the transfer of a “boat” subject to the \$500 maximum tax.);
- aircraft;
- trailer or semitrailer capable of being pulled only by a truck tractor;
- self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower;<sup>9</sup>
- fire safety education trailer; and
- horse trailer.

In order for the lease of any of the above items to qualify for the \$500 maximum tax, the lease must specifically state the term of, and remain in force for, a period in excess of 90 continuous days. In addition, the sales or use tax applies to each renewal of the lease and the maximum tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

Note: The sale or purchase of any vehicle or other item which is subject to an infrastructure maintenance fee by South Carolina Code §56-3-627 is exempt from sales and use tax. See South Carolina Code §12-36-2120(83). See Chart 1 in Exhibit A for examples of transactions which are subject to the infrastructure maintenance fee and exempt from sales and use tax.

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<sup>5</sup> See South Carolina Revenue Ruling #18-1.

<sup>6</sup> See the discussion later in this chapter on boats for a complete explanation.

<sup>7</sup> South Carolina Revenue Ruling #18-4.

<sup>8</sup> South Carolina Revenue Ruling #18-5. In addition, a barge that is permanently affixed to a (1) dock, (2) the ocean, lake or river bottom, or (3) any other realty is not used as a “boat” and is not entitled to the maximum tax under South Carolina Code §12-36-2110.

<sup>9</sup> In order for the maximum tax to apply to self-propelled light construction equipment, the equipment must be used in construction. Equipment purchased for maintenance or repair purposes does not qualify for the maximum tax and is subject to the state sales and use tax at a rate of 6%, plus any applicable local sales and use taxes. See South Carolina Technical Advice Memorandum #89-13 and Form ST-405.

- (B) A maximum tax of \$300 is established for the sale of each musical instrument, or each piece of office equipment,<sup>10</sup> purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3), provided the musical instrument or office equipment must be located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the Department. The affidavit must be retained by the seller.
- (C) A maximum tax is established for the sale of a manufactured home<sup>11</sup> as defined in South Carolina Code §40-29-20. The maximum tax applicable to the sale of a manufactured home depends on whether or not the manufactured home meets certain energy efficiency requirements. See the section in this chapter on manufactured homes for details.<sup>12</sup>

### Maximum Tax Does Not Apply To:

The following are examples of tangible personal property the sale or lease of which are not subject to the maximum tax:

- trailers or semitrailers capable of being pulled by vehicles other than a truck tractor;<sup>13</sup>
- pole trailers;
- boat trailers;<sup>14</sup>
- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and,
- all terrain vehicles, legend race cars,<sup>15</sup> golf carts and other items not meeting the definition of a motor vehicle.

Sales or leases of these items are subject to a state tax rate of 6%, plus any applicable local sales and use tax.

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<sup>10</sup> South Carolina Code §12-36-2110(C).

<sup>11</sup> South Carolina Code §12-36-2110(B).

<sup>12</sup> **Manufactured homes designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy efficiency requirements, or designated as meeting or exceeding the energy efficiency requirements under each agency's Energy Star program, are exempt from the sales and use tax for sales or purchases from July 1, 2009 through July 1, 2024.** See the section in this chapter on manufactured homes for details.

<sup>13</sup> See SC Revenue Ruling #14-2.

<sup>14</sup> See the discussion later in this chapter on boats for a complete explanation.

<sup>15</sup> South Carolina Revenue Advisory Bulletin #00-03 and SC Revenue Ruling #18-1.

Note: The sale or purchase of any vehicle or other item which is subject to an infrastructure maintenance fee by South Carolina Code §56-3-627 is exempt from sales and use tax and the casual excise tax. See South Carolina Code §12-36-2120(83). See Chart 1 in Exhibit A for examples of transactions which are subject to the infrastructure maintenance fee and exempt from sales and use tax and the casual excise tax.

Motor Vehicles Sold to Nonresidents:<sup>16</sup>

The sales tax due on a sale to a nonresident<sup>17</sup> of a motor vehicle that is to be registered and licensed in the nonresident purchaser's state of residence, is as follows:

1. The lesser of:
  - (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or
  - (b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws (the lesser of 5% of the gross proceeds of sale or \$500).
2. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

Note: Even though a credit will be allowed in the purchaser's state of residence for sales tax paid in South Carolina under this provision, a state or local tax may still be due in the purchaser's state of residence. This may be a result of a higher state tax due in the purchaser's state, a local tax due in the purchaser's state, or other provisions of the state tax law in the purchaser's state of residence (e.g., credit provisions concerning state vs. local taxes).

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<sup>16</sup> South Carolina Code §12-36-930 and South Carolina Information Letter #14-2. Note: The provisions of this section also apply to trailers, semitrailers, or pole trailers; however, the application of the provisions of South Carolina Code §12-36-930 with respect to trailers, semitrailers, or pole trailers is not discussed in the section since not all trailers, semitrailers, or pole trailers are subject to the maximum tax. For details as to vehicles that are or are not subject to the maximum tax, see the "General Information" section above.

<sup>17</sup> South Carolina Code §12-36-2120(25) exempts sales of motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within ten days of the sale the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer.

At the time of the sale, the seller must obtain from the purchaser a notarized statement of the purchaser's intent to license the vehicle in the purchaser's state of residence within 10 days.<sup>18</sup> South Carolina Form ST-385, "Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer, or Pole Trailer Purchased in South Carolina in Purchaser's State of Residence," may be used. The seller should retain a completed and notarized copy of Form ST-385. The purchaser should give a copy to the appropriate agency (e.g., revenue department, department of motor vehicles) of the purchaser's state of residence.

Note: Licensed SCDMV dealers remit sales tax to the SCDMV for motor vehicle sales to nonresidents who will register the motor vehicle outside of South Carolina.<sup>19</sup> Retailers who are not licensed SCDMV dealers remit sales tax to the SC Department of Revenue for motor vehicle sales to nonresidents who will register the motor vehicle outside of South Carolina. See Chart 2 in Exhibit A for more information.

## **B. Boats, Boat Motors, and Boat Trailers – Sold for Personal Use<sup>20</sup>**

The following guidelines concern the sales, use, and casual excise tax rates applicable to the sale of boats, boat motors, and boat trailers:

1. A boat sold alone is taxed at the lesser of 5% of the purchase price or \$500.
2. A boat motor sold alone is taxed at 6% of the purchase price.
3. A boat trailer sold alone is taxed at 6% of the purchase price. (The casual excise tax does not apply to boat trailers.)

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<sup>18</sup> If the purchaser does not plan to license the vehicle in his state of residence or does not complete the notarized statement, then the provisions of South Carolina Code §12-36-930 are not applicable and the sale is taxed as if the purchaser were a resident of South Carolina.

<sup>19</sup> Code Section 12-36-2110(A)(5) was added by Act No. 40 of 2017 to provide that the sales tax due on sales by dealers (registered with the South Carolina Department of Motor Vehicles) of items subject to a maximum sales tax under Code Section 12-36-2110(A)(1) (e.g., a motor vehicle or motorcycle) which would be subject to the new infrastructure maintenance fee in Code Section 56-3-627 if registered in South Carolina, but that will instead be registered in another state, must now be collected by and remitted to the South Carolina Department of Motor Vehicles. Prior to July 1, 2017, the South Carolina Department of Revenue collected this tax. For more information regarding transactions where the infrastructure maintenance fee or the sales and use tax applies, and to whom the fee or tax is remitted, see SC Information Letter #17-10 (Revised).

<sup>20</sup> For purposes of this discussion, boat trailers do not include trailers which must be pulled by truck tractors or boat trailers which are used by manufacturers to transport boats to dealerships. Further, this discussion only involves boat trailers purchased for personal use. The SCDMV has indicated that beginning July 1, 2017, boat trailers purchased for business use are subject to an infrastructure maintenance fee upon an owner's first registration in South Carolina under South Carolina Code §56-3-627. Sales or purchases of items that are subject to an infrastructure maintenance fee are exempt from sales and use tax by South Carolina Code §12-36-2120(83).

4. A boat sold with a motor permanently attached to it is taxed at the lesser of 5% of the purchase price of the boat and motor or \$500.<sup>21</sup>
5. A boat trailer sold in conjunction with the sale of a boat is taxed at 6% of the purchase price of the boat trailer. The boat is taxed at the lesser of 5% of the purchase price of the boat or \$500.
6. A boat trailer sold in conjunction with the sale of a boat that has a permanently attached motor is taxed at 6% of the purchase price of the boat trailer. The boat with a permanently attached motor is taxed at the lesser of 5% of the purchase price of the boat and motor or \$500. (Note: If the price of the boat trailer is not separately stated from the price of the boat and motor, the boat trailer is subject to tax at 6% of the fair market value of the boat trailer. If the price of the boat trailer is separately stated from the price of the boat and motor, the price breakdown must be reasonable and supported by the records of the taxpayer, otherwise the trailer will be taxed at 6% of its fair market value.)

Note: All transactions listed above that are (1) subject to a maximum tax of \$500 or (2) subject to the casual excise tax<sup>22</sup> are not subject to local sales and use taxes administered and collected by the South Carolina Department of Revenue on behalf of local jurisdictions.<sup>23</sup> All transactions listed above that are not subject to a maximum tax or the casual excise tax (and therefore taxed at 6% for state sales and use tax purposes) are subject to local sales and use taxes administered and collected by the South Carolina Department of Revenue on behalf of local jurisdictions.

For additional information on the sale of boats, boat motors, and boat trailers, see SC Revenue Ruling #18-11.

## C. Manufactured Homes

Calculation of the Tax: The maximum tax on the sale of a manufactured home,<sup>24</sup> as defined in South Carolina Code §40-29-20, is calculated as follows:

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<sup>21</sup> A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

<sup>22</sup> The only casual excise tax item which is not subject to a maximum tax is a boat motor.

<sup>23</sup> The casual excise tax is imposed for the issuance of a certificate of title, or other proof of ownership, for every boat, boat motor, or airplane required to be registered, titled, or licensed. Code Section 12-36-1710. It is not a sales or use tax. A local jurisdiction has authority to impose sales and use tax, but not a casual excise tax.

<sup>24</sup> South Carolina Code §12-36-2110(B). See Act No. 354 of 2008; Temporary Proviso 73.6 (Act No. 91 of 2019); SC Information Letter #19-21; and Act No. 138 of 2020, Section 2.



- (1) subtract trade-in allowance from the sales price;
- (2) multiply the result from (1) by 65%;
- (3) if the result from (2) is no greater than \$6,000, multiply by 5% for the amount of tax due;
- (4) if the result from (2) is greater than \$6,000, the tax due is \$300 plus 2% of the amount greater than \$6,000.

Exemption for Tax in Excess of \$300: A manufactured home is exempt from any tax in excess of \$300 that may be due as a result of the calculation in item (4) above if it meets these energy efficiency levels: storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only of R-11 for walls, R-19 for floors, and R-30 for ceilings.

However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above \$300 applies if the total heat loss does not exceed that calculated using the levels of R-11 for walls, R-19 for floors, and R-30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation.

Exemption for Entire Tax Due: **From July 1, 2009 through July 1, 2024,** a manufactured home is exempt from any tax that may be due as a result of the calculation above if it has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.

Records Requirements: The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels provided above. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

Note: The maximum tax authorized does not apply to a single-family modular home regulated pursuant to Chapter 43, Title 23.



Furniture and Appliances Sold with the Home: Furniture and appliances are not considered a part of a manufactured or modular home, unless they are built-ins as noted below. For example, televisions, counter appliances, sofas, chairs and tables, even though sold with a home, are not a part of the home. Because these items are not a part of the home, they are taxed separately from the home at 6%, plus any applicable local sales and use tax, of their sales price less any trade-in allowed. The amount upon which the tax is calculated on furniture and appliances that are not built ins is the amount listed in the sales contract for these items or the retail fair market value of these items if the amounts for these items are not listed in the contract or if the amounts listed in the contract do not reasonably represent the retail fair market value of these items.<sup>25</sup>

Items such as disposals, built-in dishwashers, and built-in stoves are considered a part of the home and are not taxed separately from the home if installed at the time of the retail sale of the home.<sup>26</sup>

Heat Pumps, Air Conditioning Systems, Etc.: Heat pumps, air conditioning systems, skirting, steps, decks, septic tanks, wells, and driveways built or installed after the home is delivered to the construction site are not considered a part of the delivered home and are taxed separately from the home. The sale of these items to, or the purchase of these items by, the person who will build or supply and install them is subject to the tax at a rate of 6%, plus any applicable local sales and use tax.<sup>27</sup>

## **D. Musical Instruments and Office Equipment Sold to Religious Organizations**

The sale of each musical instrument, or each piece of office equipment,<sup>28</sup> purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3) is subject to a maximum tax of \$300, provided the musical instrument or office equipment is located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department (Form ST-382). The affidavit must be retained by the seller.

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<sup>25</sup> SC Regulation 117-335.4.

<sup>26</sup> SC Regulation 117-335.4.

<sup>27</sup> SC Regulation 117-335.5.

<sup>28</sup> South Carolina Code §12-36-2110(C).

## **Exhibit A**

### **Infrastructure Maintenance Fee, Sales/Use Tax, and Casual Excise Tax Implications of Purchases by SC Residents, Nonresidents, and Military Personnel**

The most current version of this information, as of the date of this publication, is South Carolina Information Letter #17-10 (Revised).

For questions regarding the new infrastructure maintenance fee remitted to the Department of Motor Vehicles, or sales taxes remitted by licensed SCDMV dealers to the Department of Motor Vehicles on sales to nonresidents, please contact the Department of Motor Vehicles at [cartaxes@scdmv.net](mailto:cartaxes@scdmv.net).



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

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SC INFORMATION LETTER #17-10 (Revised)<sup>1</sup>

SUBJECT: South Carolina Infrastructure and Economic Development Reform Act

DATE: June 27, 2017

REFERENCE: Act No. 40 (Enacted May 10, 2017)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)  
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

**NOTICE TO MOTOR VEHICLE, MOTORCYCLE, AND TRAILER  
DEALERS AND RETAILERS**

***Overview of New Infrastructure Maintenance Fee:***

The General Assembly recently enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina's transportation infrastructure system and to set the State on the path towards a first-class road network. As part of its effort to improve the State's transportation infrastructure network, a new infrastructure maintenance fee has been enacted that will become effective July 1, 2017.

Registration in South Carolina upon Purchase or Lease: The owner of each vehicle, trailer, semitrailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semitrailer or other item with the SC Department of Motor Vehicles ("SCDMV"). The infrastructure maintenance fee is remitted to SCDMV and is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500, for a sale by a licensed SCDMV dealer or 5% of the vehicle's fair market value, not to exceed \$500, for a sale by a person who is not an SCDMV licensed dealer.

Sales that are subject to the new infrastructure maintenance fee are exempt from the State and local sales and use taxes.

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<sup>1</sup> See additional information on page 4.

If a dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the infrastructure maintenance fee and remit it to SCDMV. Generally, based on information from SCDMV, a dealer is a person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV. A dealer also includes, effective November 19, 2018, a person licensed with SCDMV in the business of selling mopeds.

*Registration in South Carolina after First Registration in Another State:* The infrastructure maintenance fee is also imposed when a vehicle, trailer, semi-trailer or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner. This infrastructure maintenance fee is \$250.

### ***Charts for Dealers, Other Retailers, and Nonretailers:***

The Department of Revenue, in coordination with the Department of Motor Vehicles, has prepared several charts to assist dealers and other retailers in determining: (1) whether the sale is subject to the new infrastructure maintenance fee or the sales and use tax; (2) whether to remit the infrastructure maintenance fee to the Department of Motor Vehicles or remit the sales and use tax on sales to nonresidents to the Department of Motor Vehicles or the Department of Revenue; and (3) the rate of the infrastructure maintenance fee or the sales and use tax.

Attached are three charts that address the following categories of sales, with each chart providing information concerning the type of vehicle, the fee or tax that applies to the transaction, the fee or tax rate, and the maximum fee or tax (if applicable):

- Chart 1: Motor Vehicles and Other Items Purchased and Registered in South Carolina by a South Carolina Resident and Other Items Purchased by a South Carolina Resident
- Chart 2: Motor Vehicles and Other Items Purchased in South Carolina by a Nonresident to be Registered or Used Outside of South Carolina
- Chart 3: Motor Vehicles and Other Items Previously Registered Outside of South Carolina

Chart 1 and Chart 2 address three types of transactions – (1) purchases from licensed SCDOR retailers who are also licensed SCDMV dealers (e.g., a motor vehicle dealership); (2) purchases from licensed SC DOR retailers who are not licensed SCDMV dealers (e.g., a retailer selling motor vehicles from its delivery fleet); and (3) purchases from nonretailers (e.g., a casual sale by an individual).

## ***General Summary:***

While these charts provide information about many different types of vehicles and other items, it is not an all-inclusive list of transactions. The application of the new infrastructure maintenance fee or the sales and use tax can generally be summarized as follows (unless the transaction is otherwise exempt):

### General Rule:

- If the vehicle is required to be registered and is registered with the Department of Motor Vehicles, the Infrastructure Maintenance Fee applies and is remitted to the Department of Motor Vehicles.
- If the vehicle is of a type that is not required to be registered with the Department of Motor Vehicles, then the sales tax would apply and is remitted to the Department of Revenue (e.g., a utility trailer for personal use).

### Sales to Nonresidents:

- If the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) (e.g., motor vehicle, motorcycle, recreational vehicle), is of the type that would be registered in South Carolina if not for it being registered out-of-state, and is sold by a SCDMV licensed dealer to a nonresident who will register it in his home state, then the sales tax applies and is remitted to the Department of Motor Vehicles. (Note: The sales tax imposed on such sales to a nonresident by a person who is not a licensed SCDMV dealer are remitted to the Department of Revenue.)

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on motor vehicles, trailers, semitrailers or pole trailers, (2) the purchaser's state of residence does not allow a credit against their use tax for sales tax paid on such items in South Carolina, or (3) the sale is otherwise exempt from the sales tax.

- If the vehicle is not subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) and is sold to a nonresident who will register it in his home state, then the sales tax applies and it is remitted to Department of Revenue.

### Casual Excise Tax:

- The casual excise tax will no longer apply to motor vehicles and motorcycles. Beginning July 1, 2017, the casual excise tax will only apply to aircraft, boats and boat motors. The infrastructure maintenance fee, however, is paid at the time of registration.

The attached charts provides the applicable rate for the infrastructure maintenance fee or the sales and use tax for each of the above scenarios and also provide general information, including information on exemptions for active duty military members.

***Additional Information:***

This information letter, SC Information Letter #17-10, was originally issued on June 27, 2017. The attached charts were published as “drafts” at that time to provide immediate guidance. This revision of SC Information Letter #17-10 does not change the original charts. It only removes the “Draft” status of the charts and finalizes the charts as of December 12, 2017. For more detailed information about these changes, and for other changes that became effective July 1, 2017 (e.g., motor fuel user fee increase, maximum sales and use tax increase from \$300 to \$500 on certain items), see SC Information Letter #17-8.

If you have questions regarding the new infrastructure maintenance fee remitted to the Department of Motor Vehicles, or sales taxes remitted by licensed SCDMV dealers to the Department of Motor Vehicles on sales to nonresidents, please contact the Department of Motor Vehicles at [cartaxes@scdmv.net](mailto:cartaxes@scdmv.net).

If you have questions regarding all other sales and use tax matters, please contact the Department of Revenue at (803) 898-5000 or [salestax@dor.sc.gov](mailto:salestax@dor.sc.gov).

**ITEMS SUBJECT TO SALES/USE TAX  
OR INFRASTRUCTURE MAINTENANCE FEE (IMF)  
- Effective July 1, 2017 -**

<b>CHART 1: MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Motor Vehicle (Including Low Speed Vehicles & State/County/Local Government Vehicles with a plate class of SG, CG, MG, or RG) (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Motorcycle (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
US Government Vehicle	Exempt	Exempt (See S.C. Code § 12-36-2120(2))	

<b>CHART 1:</b> <b>MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND REGISTERED</b> <b>IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND</b> <b>OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Motor Homes (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Moped (Purchased on or after November 19, 2018 - See 2017 Act No. 89) (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Moped (Purchased prior to November 19, 2018)		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction



<b>CHART 1:</b> <b>MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND REGISTERED</b> <b>IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND</b> <b>OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Trailer or Semitrailer, Pulled by a Truck Tractor (Maximum Sales Tax Item)		<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>
Pole Trailer		<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>
Utility Trailers, Boat Trailers, and Farm Trailers - Business Use		<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>

<b>CHART 1:</b> <b>MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND REGISTERED</b> <b>IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND</b> <b>OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Utility Trailers, Boat Trailers, and Farm Trailers - Personal Use		Sales Tax Remitted by Retailer to DOR 6% + Local (Unless Exempt Under S.C. Code § 12-36-2120(16))	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Horse Trailer (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Recreational Vehicles Pulled by a Motor Vehicle (Tent Campers, Travel Trailers, Park Models, Park Trailers, and Fifth Wheels) (Maximum Sales Tax Item)		No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Dirt Bikes (Off Road) (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Aircraft (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax Collected by Seller  Buyer Remits Casual Excise Tax to DOR Upon Issuance of Certificate of Title, or Other Proof of Ownership 5% up to \$500

<b>CHART 1:</b> <b>MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Boat or Boat with Motor Permanently Attached at Time of Sale (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax Collected by Seller  Buyer Remits Casual Excise Tax to DOR or DNR Upon Issuance of Certificate of Title, or Other Proof of Ownership 5% up to \$500
Boat Motor (Not permanently attached to boat at time of sale) (Not a Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 6% + Local  Note: Local Sales/Use Taxes Apply Except for the Local Option Tax in S.C. Code § 4-10-20	No Sales Tax Collected by Seller  Buyer Remits Casual Excise Tax to DOR or DNR Upon Issuance of Certificate of Title, or Other Proof of Ownership 6%
Golf Carts, ATVs, and Go-Carts		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales or Casual Excise Tax Due on Transaction
Professional Race Cars Towed to or from a Race Track		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales Tax, Casual Excise Tax or IMF Due on Transaction
Single Family Modular Home (Ch. 43, Title 23)		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales or Casual Excise Tax Due on Transaction
Musical Instrument/Office Equipment Purchased by IRC § 501(c)(3) Religious Organization (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$300 (See S.C. Code § 12-36-2110(C))	No Sales or Casual Excise Tax Due on Transaction
Manufactured Home (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR (See S.C. Code § 12-36-2110(B))	No Sales or Casual Excise Tax Due on Transaction

(See General Information for Chart 1 on the Following Page)

## CHART 1 GENERAL INFORMATION

### **Maximum Tax Items (5% up to \$500) under S.C. Code § 12-36-2110(A)**

- |  |   |  |
|--|---|--|
| • Motor Vehicle  | • Horse Trailer   | • Boat   |
| • Motorcycle   | • Fire Safety Education Trailer   | • Aircraft, including  |
| • Trailer or Semitrailer, capable of being pulled only by a truck tractor  | • Self-Propelled Light Construction Equipment with compatible attachments limited to a maximum of 160 net engine horsepower | unassembled aircraft to be assembled by the purchaser, but not items to be added to the unassembled aircraft |
| • Recreational Vehicles including Tent Campers, Travel Trailers, Park Models, Park Trailers, Motor Homes, and Fifth Wheels |   |  |

### **Sales and Use Tax Exemptions**

Chart 1 provides the tax rate and maximum tax (if applicable) for various sales and use tax transactions. Notwithstanding the above, some sales may be exempt under S.C. Code § 12-36-2120 (e.g., farm trailers used in planting, cultivating and harvesting of farm crops - S.C. Code § 12-36-2120(16)) and therefore not subject to the tax.

### **Purchases by Nonresidents for First Registration or Use in South Carolina**

Chart 1 concerns motor vehicles and other items that are purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to motor vehicles and other items purchased by nonresidents that are first registered in South Carolina with the SC Department of Motor Vehicles ("SCDMV") (i.e., subject to the Infrastructure Maintenance Fee) or are purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

### **Out-of-State Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer**

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina, or (2) to deliver the item to a common carrier or the US mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

### **Active Duty Military Members**

See Charts 2 and 3 for information on the taxes and fees imposed on active duty military members, if any.

**ITEMS SUBJECT TO SALES/USE TAX  
OR INFRASTRUCTURE MAINTENANCE FEE (IMF)  
- Effective July 1, 2017 -**

<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
Motor Vehicle (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DMV  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Notes 1 and 2 for exceptions	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Note 1 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Motor Homes (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DMV  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Notes 1 and 2 for exceptions	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Note 1 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Motorcycle (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DMV  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Notes 1 and 2 for exceptions	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500  See Note 1 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	

<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
Dirt Bikes (Off Road) (Maximum Sales Tax Item) (Not of a Type Subject to Registration under S.C. Code § 56-3-627)	Sales Tax Remitted by Dealer to DOR 5% up to \$500	Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Moped (Purchased on or after November 19, 2018 - See 2017 Act No. 89) (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DMV Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exceptions	Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Recreational Vehicles Pulled by a Motor Vehicle (Tent Campers, Travel Trailers, Park Models, Park Trailers, and Fifth Wheels) (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Trailer or Semitrailer of a Type Required to be Licensed and Registered (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	

<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
Trailer, Semitrailer, or Pole Trailer of a Type Required to be Licensed and Registered (Not a Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the purchaser's state of residence or 6% + Local  See Notes 1 and 2 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Trailer or Semitrailer of a Type Not Required to be Licensed and Registered (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Trailer or Semitrailer of a Type Not Required to be Licensed and Registered (Not a Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
<i>Nonresident Military</i> Motor Vehicles (excluding trucks) and Motorcycles Purchased by a Non-Resident Member of the Military Located in South Carolina by Reason of Orders of the US Armed Forces (e.g., car, minivan, SUV, motorcycle) (Personal Use Only)	No IMF or Sales Tax Remitted on Transaction  Exempt under S.C. Code §§ 12-36-2120(25) & 56-3-627(H) regardless of state of registration	No IMF or Sales Tax Remitted on Transaction  Exempt under S.C. Code §§ 12-36-2120(25) & 56-3-627(H) regardless of state of registration	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	

<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
<i>Nonresident Military and Spouse</i> Motor Vehicles ( <u>including trucks</u> ), Motorcycles, Trailers and Semitrailers Purchased by a Non-Resident Member of the Military ( <u>including Spouse</u> ) Located in South Carolina by Reason of Orders of the US Armed Forces (e.g., car, motor home, recreational trailer, truck, minivan, SUV, motorcycle) (Personal Use Only)	No IMF or Sales Tax Remitted on Transaction if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.  Exempt Under Servicemember Civil Relief Act See §§ 3911 (Definitions), 4001 (Exemption for Personal Property), and 49 U.S. Code § 30102 (Definition of Motor Vehicle)	No IMF or Sales Tax Remitted on Transaction if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.  Exempt Under Servicemember Civil Relief Act See §§ 3911 (Definitions), 4001 (Exemption for Personal Property), and 49 U.S. Code § 30102 (Definition of Motor Vehicle)	No Sales Tax or Casual Excise Tax Due on Transaction  No IMF due on Transaction if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.	
Aircraft (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax or IMF Due on Transaction  No Casual Excise Tax Due, Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (If Casual Excise Tax Applies, 5% up to \$500)	



<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
Boat or Boat with Motor Permanently Attached at Time of Sale (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax or IMF Due on Transaction  No Casual Excise Tax Due, Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (If Casual Excise Tax Applies, 5% up to \$500)	
Boat Motor (Not permanently attached to boat at time of sale) (Not a Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 6% + Local  Note: Local Sales/Use Taxes Apply Except for the Local Option Tax in S.C. Code § 4-10-20	No Sales Tax or IMF Due on Transaction  No Casual Excise Tax Due, Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (If Casual Excise Tax Applies, 6% but no Local Taxes)	
Golf Carts, ATVs, and Go-Carts		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	

<b>CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>				
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)</b>	
Moped (Purchased prior to November 19, 2018)		Sales Tax Remitted by Retailer to DOR 6% + Local	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Musical Instrument/Office Equipment Purchased by IRC § 501(c)(3) Religious Organization (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR 5% up to \$300 See S.C. Code § 12-36-2110(C)	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	
Manufactured Home (Maximum Sales Tax Item)		Sales Tax Remitted by Retailer to DOR See S.C. Code § 12-36-2110(B)	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction	

(See General Information and Notes for Chart 2 on the Following Pages)

## CHART 2 GENERAL INFORMATION

### **Maximum Tax Items (5% up to \$500) under S.C. Code § 12-36-2110(A)**

- |  |   |  |
|--|---|--|
| • Motor Vehicle  | • Horse Trailer   | • Boat   |
| • Motorcycle   | • Fire Safety Education Trailer   | • Aircraft, including  |
| • Trailer or Semitrailer, capable of being pulled only by a truck tractor  | • Self-Propelled Light Construction Equipment with compatible attachments limited to a maximum of 160 net engine horsepower | unassembled aircraft to be assembled by the purchaser, but not items to be added to the unassembled aircraft |
| • Recreational Vehicles including Tent Campers, Travel Trailers, Park Models, Park Trailers, Motor Homes, and Fifth Wheels |   |  |

### **Sales and Use Tax Exemptions**

Chart 4 provides the tax rate and maximum tax (if applicable) for various sales and use tax transactions. Notwithstanding the above, some sales may be exempt under S.C. Code § 12-36-2120 (e.g., farm trailers used in planting, cultivating and harvesting of farm crops - S.C. Code § 12-36-2120(16)) and therefore not subject to the tax.

### **Purchases by Nonresidents for First Registration or Use in South Carolina**

Chart 1 concerns motor vehicles and other items that are purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to motor vehicles and other items purchased by nonresidents that are first registered in South Carolina with the SC Department of Motor Vehicles ("SCDMV") (i.e., subject to the Infrastructure Maintenance Fee) or are purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

### **Active Duty Military Members**

*Resident Military Members:* See Chart 1 for registration or purchases by military members who are residents of South Carolina.

*Nonresident Military Members:* See also Chart 1 and 3 for more information on the taxes and fees imposed on nonresident active duty military members, if any.

## CHART 2 NOTES

### **Note 1: Purchases by Nonresidents for Registration in the Purchaser's State of Residence**

Code Section 12-36-930 provides that the sales tax due on a sale to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence, is the lesser of (1) the sales tax which would be imposed on the sale in the purchaser's state of residence or (2) the tax that would be imposed in South Carolina.

No sales tax is due in South Carolina if (1) a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina or (2) the nonresident's state does not impose a sales tax on the sale of a motor vehicle, trailer, semitrailer, or pole trailer.

#### **Examples (as of July 1, 2017):**

*Georgia and North Carolina:* Since Georgia and North Carolina do not impose a sales tax on the sale of motor vehicles, no sales tax is due in South Carolina on a sale to a Georgia or North Carolina resident who will license and register the motor vehicle in their state of residence.

*Virginia:* Since Virginia does not allow a credit against its use tax for sales tax paid in South Carolina on the purchase of a motor vehicle, no sales tax is due in South Carolina on a sale to a Virginia resident who will license and register the motor vehicle in their state of residence.

*Alabama, Florida, and Tennessee:* Since Alabama, Florida, and Tennessee impose a sales tax on the sale of motor vehicles and allow a credit against use tax for sales taxes paid in South Carolina on purchases of motor vehicles, the South Carolina sales tax is due on the lesser of the sales tax imposed in the purchaser's state of residence or 5% South Carolina sales tax, but no more than \$500.

### **Note 2: Out-of-State Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer**

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina, or (2) to deliver the item to a common carrier or the US mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

<b>CHART 3:</b> <b>MOTOR VEHICLES AND OTHER ITEMS PREVIOUSLY  REGISTERED OUTSIDE OF SOUTH CAROLINA</b> <b>- Effective July 1, 2017 -</b>	
<b>Item Previously Registered  Outside of South Carolina</b>	<b>Infrastructure Maintenance Fee (IMF)</b>
Vehicle Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the <u>first</u> time by the Same Owner	IMF Remitted by Owner to DMV  \$250
<i>Active Duty Military Member and Family  (Resident or Nonresident):</i> Vehicle Previously Registered Out-of-State by Active Duty Military or Spouse/ Dependent and Subsequently Registered for the <u>first</u> time in SC by Same Owner	No IMF Due on Registration in South Carolina  Exempt Under S.C. Code § 56-3-627(D)(2)

## Chapter 11

# Accommodations

### A. General Information

**Imposition:** A 7% sales tax is imposed upon the gross proceeds<sup>1</sup> from the rentals or charges for sleeping accommodations furnished at any place in which rooms, lodgings, or sleeping accommodations of any kind are furnished, including but not limited to:

- hotels
- motels
- inns
- campgrounds (campground spaces)
- tourist courts
- tourist camps
- condominiums
- residences

In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the rentals or charges for sleeping accommodations.<sup>2</sup>

The sales tax on accommodations does not apply to:

- (1) the lease or rental of accommodations supplied to the same person for a period of 90 continuous days;<sup>3</sup>
- (2) the lease or rental of accommodations at a facility consisting of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities; or

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<sup>1</sup> Destination marketing fees, hotel marketing fees, and other similar service charges are subject to the 7% sales tax on accommodations. See SC Revenue Ruling #18-7.

<sup>2</sup> In addition, local governments may impose a local accommodations tax of up to 3%, and some municipalities may impose a beach preservation fee of up to 1%. These are in addition to the statewide sales and accommodations taxes and the local sales taxes administered and collected by the Department (if applicable). **The local accommodations tax and the beach preservation fee are collected by the local government imposing the tax or fee, not the Department of Revenue.**

<sup>3</sup> South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.

(3) the gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g). For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.<sup>4</sup>

Liability: The person liable for the tax is the person in the business of furnishing the accommodations, whether such person is the owner or a real estate agent, listing service, broker, online travel company, or similar entity handling the accommodations. The person liable for the sales tax on accommodations must obtain a retail license and remit the tax to the Department on a monthly basis.

However, persons furnishing accommodations to transients for one week or less in any calendar quarter are not required to obtain a retail license, but are required to remit the tax annually by April 15<sup>th</sup> of the following calendar year.<sup>5</sup> In addition, persons who rent a dwelling unit for less than 15 days during the taxable year and who also use the dwelling unit as a residence (for personal purposes) for 14 days or more during the taxable year are not required to obtain a retail license.

The following examples illustrate the person liable for the sales tax on accommodations:

Owner Rents: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home at various times throughout the year, but rents the vacation home on a weekly basis throughout the summer (more than 14 days)<sup>6</sup> and several other times throughout the year on a weekly basis.<sup>7</sup>

Mr. Smith is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home. The tax must be remitted on a monthly basis.<sup>8</sup>

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<sup>4</sup> SC Revenue Ruling #15-4. See also Internal Revenue Code Section 280A(d) for more details on when a dwelling unit is used as a residence.

<sup>5</sup> South Carolina Code §12-36-510(B)(3).

<sup>6</sup> See SC Revenue Ruling #16-10 for more information on vacation rentals of residences, vacation homes, and places of abode for 15 days or more a year.

<sup>7</sup> While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.

<sup>8</sup> See also Administrative Law Court decisions #07-ALJ-17-0407-CC (2009); #00-ALJ-17-0569-CC (2001); #96-ALJ-17-0380-CC (1997); and SC Revenue Ruling #16-10.

Listing Service Rents: Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home on a weekly basis throughout the summer.<sup>9</sup>

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home. The tax must be remitted on a monthly basis.<sup>10</sup>

Owner Rents for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days), but he only rents the vacation home one weekend a year during the Heritage Golf Tournament.

Mr. Smith is not required to obtain a retail license and is not liable for the 7% sales tax on accommodations to the Department or any applicable local sales and use taxes administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home.<sup>11</sup>

Listing Service Rents a Client's Residence for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days). Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home for one weekend a year during the Heritage Golf Tournament.

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home.

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<sup>9</sup> While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.

<sup>10</sup> See also Administrative Law Court decisions #00-ALJ-17-0569-CC (2001) and #96-ALJ-17-0380-CC (1997).

<sup>11</sup> SC Revenue Ruling #15-4.



Rentals to Transients at Residential Retirement Communities:<sup>12</sup> As an amenity to their residents, ABC Residential Retirement Community sets aside a unit for short-term rentals. Out-of-town family members and friends of the residents of the residential retirement community may rent the unit while visiting. Payment for this unit may be made by the resident on behalf of the visitor or by the visitor. The unit is rented on a short-term basis, typically daily or weekly, but in some cases may be available to rent for a month or more.

ABC Residential Retirement Community is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction (*e.g.*, county, municipality), with respect to the gross proceeds of such nightly, weekly or monthly rentals to family and friends of homeowners, unless the same unit is provided to the same person for a period of ninety or more continuous days.<sup>13</sup>

Note: Some residential retirement facilities are operated by nonprofit organizations. If the nonprofit organization qualifies for the exemption under South Carolina Code §12-36-2120(41), rentals of accommodations by the nonprofit organization will not be subject to the sales tax. For a determination as to whether it qualifies for the exemption in South Carolina Code §12-36-2120(41), a nonprofit organization may apply for the exemption using a Form ST-387. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See South Carolina Revenue Procedure #03-6 for more information concerning the sales tax exemption under South Carolina Code §12-36-2120(41).

Online Travel Company (Hotel Intermediary): Through the Internet, potential hotel guests can search for available hotel rooms at the website of ABC Online Travel Company and make a reservation for a room at a hotel and location that best suits their needs. ABC Online Travel Company will charge the customer's credit card for the total reservation price at the time the reservation is booked. ABC Online Travel Company has previously negotiated a price it will pay for the room to be used by the guest. The guest will not pay any additional amount to the hotel for the room. However, if the guest takes advantage of any additional services at the hotel, then the guest must pay the charges for such services (if any) to the hotel, not the ABC Online Travel Company. This method of doing business by ABC Online Travel Company is generally referred to as the "merchant model."

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<sup>12</sup> See South Carolina Revenue Ruling #09-7.

<sup>13</sup> SC Revenue Ruling #15-4.

ABC Online Travel Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction imposing the local sales and use tax, with respect to the gross proceeds ABC Online Travel Company receives from the rental of the hotel room. ABC Online Travel Company's "gross proceeds" is the total amount it receives from its customer with no deduction for any labor or service.

The tax must be remitted on a monthly basis. The hotel is liable for the tax on any "additional guest charges" it charges the guest directly as well as the tax on room rental charges and "additional guest charges" it charges other guests who directly reserves rooms with the hotel as opposed to an online travel company.

**Note: The South Carolina Supreme Court upheld the imposition of the sales tax on accommodations on an online travel company in the case of *Travelscape LLC v. South Carolina Department of Revenue*, 391 S.C. 89, 705 S.E.2d 28, (2011).**

Notification Requirements:<sup>14</sup> The statute imposing the sales tax on accommodations requires real estate agents, listing services, brokers or similar entities handling the accommodations for an owner to notify the Department "if rental property, previously listed by them, is dropped from their listings."<sup>15</sup>

Therefore, if a real estate agent, broker, or similar listing service is handling the accommodations for an owner of a home, condominium unit, timeshare unit or other rental property and is remitting the 7% state sales tax on accommodations on the rental of that property, then the real estate agent, broker, or similar listing service must notify the Department if the owner decides to no longer list that rental property with them.

The notification should be sent to:

ATTN: Accommodations Notification Information  
South Carolina Department of Revenue  
Business Tax Resolution  
P.O. Box 125  
Columbia, South Carolina 29214-0840

The notifications should include the following information concerning each listing:

1. Name of the owner of the rental property,
2. Address of the owner of the rental property,
3. Address of the rental property, and

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<sup>14</sup> SC Information Letter #11-19

<sup>15</sup> South Carolina Code §12-36-920(C).

4. The date the rental property was dropped from the listings of the real estate agent, broker, or similar listing service.

The notification may be, but does not need to be, sent each time a listing is dropped. The notification may be sent twice a year – once, by July 31<sup>st</sup>, for all listings dropped from January through June, and once, by January 31<sup>st</sup>, for all listings dropped from July through December.

“Rent by Owner” Vacation Rental Websites:<sup>16</sup> In 2014, the South Carolina General Assembly enacted the “Fairness in Lodging Act” (Act No. 261 of 2014). The purpose of this law is to improve compliance with state and local accommodations tax laws.

In addition to the 7% State sales tax on accommodations, plus any applicable local sales tax collected by the Department on behalf of the local jurisdiction, municipalities and counties may impose a local accommodations tax of up to 3% that the municipality or county collects directly.

Under the “Fairness in Lodging Act,” the Department and municipalities and counties will be sharing information to ensure better compliance with the law. In addition, the Department must identify websites containing “rent by owner” vacation rental opportunities and request that such websites post a statement notifying all owners of South Carolina rental properties that they must be licensed and must remit all applicable state and local fees and taxes on charges and rentals derived from the furnishing of sleeping accommodations, unless the rental is otherwise exempt under the law.

It is recommended that websites containing “rent by owner” vacation rental opportunities place a statement, similar to the one below, on their website concerning South Carolina:

Persons furnishing sleeping accommodations in South Carolina for vacation rental purposes must be licensed and must remit (unless otherwise exempt) the 7% state sales tax, plus any applicable local sales tax, to the South Carolina Department of Revenue, and must also remit any applicable local accommodations tax collected directly by the municipality and county in which the property is located to the applicable municipality and county.

The statement may be placed anywhere on the website, including the webpage on which the owner of the vacation rental property first registers with the website and posts their property for rental.

For information on local accommodations taxes collected directly by municipalities and counties, visit the website of the municipality and county in which the property is located.

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<sup>16</sup> SC Information Letter #15-4.

## **B. Transactions Not Subject to the Sales Tax on Accommodations**

The following provides examples of transactions that are not subject to the sales tax on accommodations as a result of (1) exclusions or exemptions provided in federal or state law and (2) transactions that do not fall within the imposition of the sales tax on accommodations. In addition, some examples of exclusions or exemptions also include situations where the tax is applicable to demonstrate the limitations of the exclusion or exemption.

### General Exclusions

90 Day Rentals: The lease or rental of accommodations supplied to the same person (same room, same person) for a period of 90 continuous days.<sup>17</sup>

The following two examples illustrate the application of this exclusion:

Owner Rents for 90 Days or More Consecutively to One Person:<sup>18</sup> W owns a home and lives in his home for six months during the spring/summer months and rents it to a specific person/business for the remaining six months during the fall/winter months.

The rental charges are not subject to the sales tax on accommodations under Code Section 12-36-920(A) since the home is provided to the same individual/business for a period of 90 or more continuous days.

Owner Rents for Short and Long Terms During Year:<sup>19</sup> X owns a home and rents his home to one vacationer for four months (120 consecutive days) and to all other vacationers for one to four weeks at a time during the remainder of the year. X may stay in his home during days the home is not rented.

The rental charges to the one vacationer for a period of 90 continuous days or more (120 consecutive days in this example) are not subject to the sales tax on accommodations under Code Section 12-36-920(A). The rental charges to all other vacationers who rent for less than 90 consecutive days, however, are subject to the sales tax on accommodations under Code Section 12-36-920.

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<sup>17</sup> South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.

<sup>18</sup> See South Carolina Revenue Ruling #16-10.

<sup>19</sup> See South Carolina Revenue Ruling #16-10.

Rentals of Residence for Less Than 15 Days: The lease or rental of a dwelling unit by its owner for less than 15 days during the taxable year, provided the owner of the dwelling unit uses it as a residence (used for personal purposes) for 14 days or more during the taxable year.<sup>20</sup>

Five Sleeping Rooms or Less: The lease or rental of accommodations at a facility consisting of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.<sup>21</sup> (Note: This exemption requires the facility to contain less than six sleeping rooms. This includes the sleeping room of the owner or operator of the facility. Therefore, the at least one of the five sleeping rooms available at the facility must be the sleeping room of the owner or operator.)

For this exclusion to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode."<sup>22</sup>

The following four examples<sup>23</sup> illustrate the application of this exclusion for a facility with five or less sleeping rooms:

Owner Present in Home: W owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. W rents these rooms to vacationers himself and does not employ the services of a real estate agent or broker.

The rentals by W of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to W by the vacationers are not subject to the sales tax on accommodations.

Owner Not Present in Home: X owns a home with less than six sleeping rooms and uses the home only for one or two weeks a year for family vacations. She rents the home to vacationers during the rest of the year on a weekly basis (more than 14 days). She rents it herself and does not employ the services of a real estate agent or broker.

The rentals by X of the home to vacationers do not qualify for the exception in the statute; therefore, the rental charges paid to X by the vacationers are subject to the sales tax on accommodations.

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<sup>20</sup> South Carolina Code §12-36-920(A)(2). See SC Revenue Ruling #15-4 and Internal Revenue Code Section 280A(g).

<sup>21</sup> South Carolina Code §12-36-920(A).

<sup>22</sup> SC Regulation 117-307.3.

<sup>23</sup> SC Regulation 117-307.3.

Use of Rental Agency: Y owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. However, Y never rents these rooms to vacationers himself. He employs the services of a real estate agent who rents the remaining sleeping rooms for him.

The rentals by the real estate agent of these rooms to vacationers for Y do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

Both Rental by Owner and Rental Agency: Z owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. He employs the services of a real estate agent who rents the remaining sleeping rooms for him. However, sometimes Z rents these remaining rooms to vacationers himself.

The rentals by the real estate agent of these rooms to vacationers for Z do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

The occasional rentals by Z of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to Z by the vacationers are not subject to the sales tax on accommodations.

#### Federal Government Agencies<sup>24</sup>

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax if the accommodations are purchased directly by the federal government.

Therefore, the sales tax on accommodations is not applicable when:

1. The federal government is billed directly by the retailer;
2. The federal employee pays by government check; or,

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<sup>24</sup> South Carolina Code §12-36-2120(2), SC Regulation 117-307.6 and South Carolina Revenue Ruling #19-7.

3. The federal employee pays by government credit card<sup>25</sup> and the federal government is billed directly by the credit card company.

However, charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

1. The federal employee pays by personal check; or,
2. The federal employee pays by credit card,<sup>26</sup> is billed directly by the credit card company, and is reimbursed by the federal government.

Note: Charges for hotel and motel accommodations to a state or local government employee on official government business are subject to the sales tax, regardless of whether the state or local government or employee pays the charges.

#### American Red Cross<sup>27</sup>

The sale to the American Red Cross is exempt from sales tax if:

- (1) the American Red Cross is billed directly for the transaction,
- (2) the American Red Cross employee uses a credit card that is billed directly to the American Red Cross, or
- (3) the American Red Cross employee pays with an American Red Cross check.

The sale to the American Red Cross employee is subject to sales tax when the employee pays for the charge and is reimbursed by the American Red Cross.

#### Foreign Diplomats

Sales to foreign officials are exempt from the sales tax in accordance with the type of card issued by, and the level of exemption authorized by, the Office of Foreign Mission.<sup>28</sup> Vendors may ask to see additional forms of identification, such as diplomatic I.D., or driver's license.

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<sup>25</sup> SC Revenue Ruling #19-7.

<sup>26</sup> SC Revenue Ruling #19-7.

<sup>27</sup> SC Revenue Ruling #19-7.

<sup>28</sup> SC Revenue Ruling #19-7.

### Federal Credit Unions<sup>29</sup>

The sale to the federal credit union is exempt from sales tax if:

- (1) the federal credit union is billed directly for the transaction;
- (2) the federal credit union employee uses a credit card that is billed directly to the federal credit union; or
- (3) the federal credit union employee pays with a federal credit union check.

The person being furnished accommodations must be an employee of the federal credit union to come within this exemption. For example, if the federal credit union employee works for an association that represents various federal credit unions and the association pays the charges, then the accommodations are taxable since the association is not a federal credit union.

The sale to the federal credit union employee is subject to sales tax when the employee pays for the charge and is reimbursed by the federal credit union. In addition, sales of accommodations to state credit unions are subject to the tax.

### Charitable Children's Hospital

The lease or rental of accommodations to an employee of a charitable hospital predominately serving children exempt from property taxes under South Carolina Code §12-37-220, where care is provided without charge to the patient as provided in South Carolina Code §12-36-2120(47),<sup>30</sup> is exempt from the sales tax on accommodations if:

- (1) the qualifying charitable hospital is billed directly for the transaction,
- (2) the qualifying charitable hospital employee uses a credit card that is billed directly to the hospital, or
- (3) the nonprofit employee pays for the charge with the hospital's check.

Sales or rentals of accommodations to employees of all other nonprofit organizations are subject to accommodations tax regardless of whether the nonprofit organization or the employee pays for the charges.

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<sup>29</sup> South Carolina Revenue Ruling #19-7 and SC Attorney General Opinion #S-OAG-59 (1991).

<sup>30</sup> South Carolina Revenue Ruling #19-7.



### Marina or Dry Boat Storage Space<sup>31</sup>

The rental of wet slips, by a marina furnishing amenities such as electricity, water, sewage, showers, and cable television, are not subject to the sales tax on accommodations. The rentals of dry storage for boats are not subject to the sales tax on accommodations tax.

### Reserved Recreational Vehicle Space at a Raceway<sup>32</sup>

The rental of reserved recreational vehicle parking spaces at a motorsports raceway is not subject to the sales tax on accommodations.

### Exchange of Accommodations

The Department has held that accommodations provided under exchange agreements are subject to the sales tax on accommodations.<sup>33</sup> However, the General Assembly subsequently enacted an exemption for “any...exchange of accommodations in which the accommodations to be exchanged are the primary consideration.”<sup>34</sup>

Therefore, the furnishing of accommodations via an exchange of accommodations is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.

## **C. Additional Guest Charges**<sup>35</sup>

A 6% sales tax is imposed upon “additional guest charges” at places that furnish accommodations to transients. In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the “additional guest charges.”

The term “additional guest charge” means an amount which is added to the guest’s room charge for the following services for the guest:

- room service;
- laundering and dry cleaning services;

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<sup>31</sup> South Carolina Technical Advice Memorandum #90-5.

<sup>32</sup> South Carolina Private Letter Ruling #93-2.

<sup>33</sup> South Carolina Revenue Ruling #98-5.

<sup>34</sup> South Carolina Code §12-36-2120(31).

<sup>35</sup> South Carolina Code §12-36-920(B), SC Regulation 117-307.1, and SC Revenue Ruling #14-5.

- in-room movies;
- telephone service; and,
- rentals of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

As part of Act No.172 of 2014, the General Assembly specifically deleted (effective July 1, 2014) from the definition of "additional guest charges" any charges for amenities, entertainment, special items in promotional tourist packages, and other guest services. Therefore, charges for these services are not subject to the sales tax as an "additional guest charge." In addition, if separately stated on the bill to a customer and optional, these charges are not subject to the 7% sales tax imposed upon accommodations.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

## **D. Hurricane Insurance<sup>36</sup>**

Persons offering sleeping accommodations to transients will typically provide various amenities and services for an additional fee. The charges for many such amenities and services are discussed in SC Regulation 117-307.1 and SC Revenue Ruling #14-5.

Along the coast of South Carolina, many persons furnishing accommodations offer hurricane rental insurance. For a fee paid to the person offering sleeping accommodations, a guest may obtain hurricane rental insurance. This insurance will protect the vacationer against a mandatory evacuation due to a hurricane. In most cases, the charge for the hurricane rental insurance is optional.

For example, if a vacationer has rented a home for one week beginning on a Saturday and a mandatory evacuation order is issued on Monday, then the insurance will cover the vacationer for the time lost as a result of the evacuation order. In addition, the insurance may also cover circumstances in which the vacationer is not even able to take occupancy

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<sup>36</sup> See SC Regulation 117-307.7 and South Carolina Revenue Ruling #14-7.

of the home and must forego the vacation because of the mandatory evacuation and subsequent damage caused by a hurricane.

An optional charge for hurricane rental insurance, as described above, is not subject to the sales tax. As an optional charge, it is not a part of the charge for the sleeping accommodations under Code Section 12-36-920(A) and it is not an “additional guest charge” under Code Section 12-36-920(B).

A mandatory charge for hurricane rental insurance, as described above, is subject to the 7% sales tax under Code Section 12-36-920(A) as a part of the charge for furnishing the sleeping accommodations.

Note: Sleeping accommodations are “furnished” if the vacationer takes occupancy, or has the right to take occupancy, of a rental unit for any or all of the time previously agreed to when the reservations were made. If a mandatory evacuation order or hurricane causes the complete cancellation of a person’s vacation because law enforcement will not allow anyone to enter the area during the entire time originally reserved for the vacation, or a hurricane destroys the rental unit and the vacationer cannot take occupancy of the unit or any replacement unit during the entire time originally reserved for the vacation, then the sleeping accommodations were not “furnished” and the charges for the sleeping accommodations are not subject to the tax. In addition, charges for the optional or mandatory hurricane rental insurance are not subject to the tax.

If the sleeping accommodations are furnished because the vacationer actually takes occupancy, or has the right to take occupancy of a rental unit (but chooses not to), for any or all the time previously agreed to when the reservations were made, then the charges for the sleeping accommodations are subject to the tax. If the charges for the hurricane rental insurance are mandatory, then such charges are part of the charges for the accommodations and subject to the tax. If charges for hurricane rental insurance are optional, then such charges are not subject to the sales tax. See SC Regulation 117-307.7 and SC Revenue Ruling #14-7.

## **E. Cancellations of Accommodations**

If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, the charge for the accommodations retained by the hotel is subject to the tax even though he will not use the sleeping accommodations. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were “furnished” and the charge by the hotel for such sleeping accommodations is subject to the tax.

If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, any administrative fee or deposit charged or retained by the hotel as a result of the cancellation is not subject to the tax.

## **F. Purchases by Persons Furnishing Accommodations<sup>37</sup>**

Purchases by hotels, motels, etc. of tangible personal property (e.g., beds, sheets, pillows, televisions, plastic cups, toilet paper, etc.) are retail purchases subject to tax. Hotels, motels, etc. use or consume such items in providing accommodations. They do **not** rent or sell such items to their guests. They rent accommodations.

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<sup>37</sup> SC Regulation 117-307.2.

## Exhibit A

### SC Regulation 117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

The most current version of the regulation providing specific examples of the application of the sales tax on accommodations and additional guest charges is attached.

The regulation is organized into the following categories of additional charges:

<u>Category</u>	<u>Question Numbers</u>
Telephone Charges	1-4
Maid Service	5-9
In-room Movies	10-12
Meals	13-14
Linens	15
Golf and Other Tourist Packages	16
Bike Rentals	17-18
Newspapers	19-20
Valet Parking	21-23
Meeting Rooms	24-26
Room Refreshment Bar or Refrigerator	27-28
Safes	29-31
Other Charges (Pet Fees, Smoking Fees, Damage Fees, and Late Check-Out Fees)	32-36
Cancellations	37-38

**117-307.1. Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.**

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1. Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?
  - A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00.
2. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?
  - A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.
3. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?
  - A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 6%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.
4. Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?
  - A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 6% as additional guest charges. The Department in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5. Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?
  - A. The \$100.00 charge would be subject to a tax rate of 7%. The maid service is a service provided with the room and is, therefore, part of the room charge that is subject to the tax at 7%.
6. Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?
  - A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not make it a charge for a separate service. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.
7. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?
  - A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not make it a charge for a separate service. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%.
8. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?
  - A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is not subject to the sales tax. The \$50.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$50.00 is therefore not subject to the tax.
9. Q. If a rental agency charges \$800.00 per week for a condominium unit, plus a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

- A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit, but it is not an additional guest charge under the statute. The \$20.00 is therefore not subject to the tax.

### In-room Movies

10. Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?
- A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00.
11. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?
- A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.
12. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 6%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

### Meals

13. Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?



- A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)
14. Q. If a hotel charges \$100.00 for a room and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)
- A. The Department, in Commission Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room, and 6% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

#### Linens

15. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?
- A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910 and Code Section 12-36-1110.

#### Golf and Other Tourist Packages

16. Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?
- A. Based on the Department's longstanding administrative policy concerning tourist packages,<sup>38</sup> the \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

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<sup>38</sup> See SC Revenue Ruling #88-2. This policy has been consistent since 1988 and did not change when the sales and use law under Chapter 35 was recodified in 1991 as Chapter 36 of Title 12 or when Act No. 172 of 2014 was enacted.

The following examples best explain this longstanding administrative policy:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30, and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest-by-guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of the meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is not liable for the 6% tax on the other portion of the \$100 paid by the guest since it does not represent an additional guest charge for the service of making the golf arrangements that were not used. This amount, however, must be equal to the green fee that the hotel would have had to pay to the golf course in order for the entire charge not to be subject to the 7% tax. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the \$30 that would have been, but was not, sent to the golf course is not subject to the sales tax. As such, the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The \$30 that would have been, but was not, sent to the golf course is not subject to either the sales tax or the admissions tax.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

### Bike Rentals

17. Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge. However, the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36.

18. Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge.

### Newspapers

19. Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?
- A. The \$80.00 room charge is taxed at 7%.
20. Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since it is not one of the services specifically listed in the statute as an "additional guest charge." The newspaper that is provided for \$2.00 is the sale of tangible personal property; however, sales of newspapers are exempt from the sales tax under Code Section 12-36-2120(8).

Note: Room service is generally considered a service provided to a guest that allows the guest to order food or drink that will be brought to the guest's room. As such, newspapers brought to a guest's room do not fall within the customary definition of room service. Therefore, the \$2 charge to the guest for the newspaper is not an additional guest charge.

### Valet Parking

21. Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?
- A. The \$80.00 room charge is taxed at 7%.
22. Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking is not an additional guest charge and is not taxed at 6%.
23. Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?
- A. The \$15.00 charge for valet parking is not subject to the sales tax.

### Meeting Rooms

24. Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

25. Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 6%.

26. Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 6% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

### Room Refreshment Bar or Refrigerator

27. Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

28. Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so that the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 6% as a sale of tangible personal property under Code Section 12-36-910 and Code Section 12-36-1110. These charges are not additional guest charges since they are “otherwise taxed” under Chapter 36.

Safes

29. Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the safe in the room, what tax rate applies to the \$100.00?
- A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the safe is a part of the services offered and provided with the room for the \$100.00.
30. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the safe in the room, what tax rate applies to each of the charges?
- A. The \$80.00 room charge and the \$5.00 charge for the safe are taxed at 7%. The availability of a safe is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the safe.
31. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 if the guest uses the safe in the room, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%. The \$5.00 charge for actually using the safe is not subject to the tax. The availability of a safe is a part of the services offered and provided with the room; however, the use of the safe is over and above the services customarily provided with the room. In this case, guests expect to pay a charge for use of the safe. Therefore, the \$5.00 charge is not a part of the room charge. It is a charge for a service that is not an additional guest charge under the statute, and therefore, not subject to the tax.

Other Charges (Pet Fees, Smoking Fees, Damage Fees. and Late Check-Out Fees)

32. Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for having a pet in the room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$20 charge are taxed at 7%. The pet fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for having a pet in the room; therefore, the actual charge for the room is \$120.

Note: Federal Regulation concerning Service Dogs - Under Federal Regulation 28 C.F.R. 36.302(c)(8), a place of accommodation (as defined in Federal Regulation 28 C.F.R. 36.104), such as an inn, hotel or motel, "shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets."

33. Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$20 for a room in which the guest is allowed to smoke cigarettes, cigars and other smoking tobacco, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$20 charge are taxed at 7%. The smoking room fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for a smoking room; therefore, the actual charge for the room is \$120.
34. Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest smokes cigarettes, cigars and other tobacco in a non-smoking room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$35 charge are taxed at 7%. The fee for smoking in a non-smoking room is neither a charge for a service nor an additional guest charge. It is a mandatory charge for smoking in a non-smoking room; therefore, the actual charge for the room is \$135.
35. Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$35 if a guest damages the room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$35 charge are taxed at 7%. The damage fee is neither a charge for a service nor an additional guest charge. It is a mandatory charge for causing damage to the room; therefore, the actual charge for the room is \$135.
36. Q. If a hotel charges \$100.00 for a room and also charges an additional fee of \$15 if a guest checks out late (past the specified time for check-out), what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$15 charge are taxed at 7%. The late check-out is neither a charge for a service nor an additional guest charge. It is a mandatory charge for checking out past the specified time for check-out; therefore, the actual charge for the room is \$115.

### Cancellations

37. Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

- A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were “furnished” and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #38 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.
38. Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?
- A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #37 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1, Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 6% for the sales tax on additional guest charges, and 6% for the sales tax on sales or rentals of tangible personal property. However, some counties and municipalities impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax, and others are collected by the county itself.



## Chapter 12

# Local Sales and Use Taxes

### A. General Information

The South Carolina Code of Laws allows the imposition of various types of local sales and use taxes. Citizens of a county, depending upon the needs within the county, may impose one or several local sales and use taxes. Municipal councils, or the citizens of a municipality, may impose a sales and use tax<sup>1</sup> for tourism development if the municipality is located in a county where revenue from state accommodations tax is at least \$14 million in a fiscal year.

The Department publishes a chart with the various types of local sales and use taxes collected by the Department and the exemptions allowed under each tax. As of the date of this document, South Carolina Information Letter #20-2 contains the most recently published information; updated information will be published in new information letters on the Department's website ([dor.sc.gov](http://dor.sc.gov)) as warranted.

Most local taxes administered and collected by the Department on behalf of local jurisdictions are administered and collected on a county-wide basis. However, the Catawba Tribal Sales and Use Tax is only imposed on the Catawba Indian Reservation and the Tourism Development Fee is only imposed on a municipal-wide basis. The criteria discussed in this publication, unless otherwise indicated in legislation enacted by the General Assembly, will also apply to any future sales and use taxes administered and collected by the Department on behalf of a jurisdiction on a county-wide, municipal-wide or other basis as established by the General Assembly.

Please note that this chapter only addresses the general local sales and use taxes collected by the Department on behalf of local jurisdictions (e.g., counties, municipalities, school districts) and the tribal sales tax collected by the Department on behalf of the Catawba Indian tribal government.<sup>2</sup> It does not address the local taxes, or beach preservation fees, on sales of accommodations or the local taxes on sales of prepared meals that are collected directly by the counties or municipalities.

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<sup>1</sup> This municipal sales and use tax is actually a fee (Local Option Tourism Development Fee) imposed under Article 9 of Chapter 10 of Title 4. For purposes of simplicity, this fee will be referred to as a sales and use tax in this publication.

<sup>2</sup> The tribal use tax is collected directly by the Catawba Indian tribal government.

## **B. Types of Local Sales and Use Taxes**

The following is a list of local sales and use taxes<sup>3</sup> that the General Assembly has authorized the Department to administer and collect on behalf of local jurisdictions that may enact one or more of these local sales and use taxes.

**Local Option:** The local option sales and use tax is authorized under South Carolina Code §4-10-10 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to reduce the property tax burden on persons in the counties that impose this type of local tax and is collected by the Department on behalf of these counties.

**Capital Projects:** The local capital projects sales and use tax is authorized under South Carolina Code §4-10-300 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and is collected by the Department on behalf of these counties.

**Transportation:** The local transportation projects sales and use tax is authorized under South Carolina Code §4-37-30 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and are collected by the Department on behalf of these counties.

**Personal Property Tax Relief:** The personal property tax relief sales and use tax is authorized under South Carolina Code §4-10-510 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the most recently completed fiscal year. **As of the date of this publication, this tax is not being imposed.**

**Local Property Tax Credits:** The local option sales and use tax for local property tax credits is authorized under South Carolina Code §4-10-720 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales

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<sup>3</sup> The General Assembly may authorize other local sales and use taxes in the future. Unless such legislation states otherwise, any such new local sales and use tax will be administered and collected in the same manner as the taxes listed in this publication. In addition, the Catawba Indian Tribal Sales Tax is not a local tax; however, it is administered and collected by the Department in a similar manner and is therefore included on this list.

and use tax. This tax is imposed to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax and is collected by the Department on behalf of these counties. **As of the date of this publication, this tax is not being imposed.**

**Education Capital Improvement Sales and Use Tax:** The school district or school districts within a county may impose a 1% sales and use tax within the county for specific education capital improvements for the school district. The tax is authorized under South Carolina Code §4-10-410 et seq. and must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum.

The General Assembly has established several criteria that make a county or school district eligible to impose this tax. The county or school district must meet only one of these criteria, established in South Carolina Code §4-10-470, in order for the tax to be imposed within the county. Depending on the criteria met, this tax may be imposed for up to 15 years.

**School District Taxes:** The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements. These taxes are imposed county-wide, whether imposed by the county or one or more school districts.

As of the date of this publication, these school district taxes are being imposed at a rate of 1%.<sup>4</sup>

<u>County</u>	<u>Act Authorizing Tax</u>
Chesterfield	Act No. 441 of 2000
Clarendon	Act No. 355 of 2004 and Act No. 195 of 2005
Dillon	Act No. 137 of 2007
Jasper	Act No. 146 of 2001
Lexington	Act No. 378 of 2004, Act No. 88 of 2011, and Act No. 278 of 2018
Marlboro	Act No. 204 of 2005

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<sup>4</sup> See South Carolina Information Letter #20-2 for the date each school district tax was first imposed.

**Catawba Indian Tribal Tax:** The Catawba Indian Reservation is located in Lancaster and York counties. The application of either the state sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation are determined by the Catawba Indian Claims Settlement Act. The specific sales and use tax provisions can be found in South Carolina Code §27-16-130(H). The Catawba Tribal sales and use tax expires on November 28, 2092.

The following chart provides a summary of these provisions:

<b><u>Delivery on the Reservation From:</u></b>	<b>Type Tax Applicable</b>	<b><u>Administered and Collected By:</u></b>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

\* Lancaster County imposes a 1% Local Option Tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects Tax. These local taxes are in addition to the State sales and use tax. Therefore, effective May 1, 2016, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 1% for sales of unprepared foods\*\*

For sales (deliveries) made on the Reservation within York county:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods\*\*\*

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

**\*\* Note:** Lancaster County “re-imposed” the 1% Capital Projects Tax effective May 1, 2016. The new Capital Projects Tax in Lancaster County exempts sales of unprepared food effective May 1, 2016; however, the 1% Local Option Tax does not exempt sales of unprepared food.

**\*\*\*Note:** York County’s 1% Capital Projects Tax, which expired on April 30, 2018, was “re-imposed” effective the next day, May 1, 2018. The Capital Projects Tax in York County continues to exempt sales of unprepared food.

**Tourism Development Tax:** The local tourism development sales and use tax is authorized under South Carolina Code §4-10-910 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax and may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least \$14 million in a fiscal year. This tax may be imposed by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council. The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the third and subsequent years of this tax, a portion of the tax may be used for certain property tax rollbacks. The tax is collected by the Department on behalf of these municipalities.

## **C. Local Sales and Use Tax Due Dependent on County or Municipality of Delivery**

The determination as to which local sales and use tax is due depends on where delivery of the tangible personal property took place.<sup>5</sup>

For purposes of local sales and use taxes, delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

**FOB Destination or Similar Terms:** Delivery is considered to take place at the purchaser’s location or wherever delivered to the purchaser (at the purchaser’s direction).

**FOB Shipping Point or Similar Terms:** Delivery is considered to take place at the retailer’s location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

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<sup>5</sup> Attorney General Opinion #91-47 (7/30/1991).

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, but Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

## **D. Retailer's Responsibility to Remit Local Sales and Use Taxes<sup>6</sup>**

Retailers who have nexus with South Carolina have nexus for sales and use tax purposes with all local jurisdictions in South Carolina and must collect and remit to the Department local sales and use taxes administered and collected by the Department for each jurisdiction where their products are delivered. For more information on establishing nexus with South Carolina and its local jurisdictions, see SC Revenue Ruling #18-15 and Chapter 13 of this manual.

The following are examples of when a retailer with nexus is required to collect and remit a local jurisdiction's sales and use tax:

Out-of-State Retailer: A retailer located in North Carolina establishes economic nexus with South Carolina.<sup>7</sup> The retailer sells a chair to a South Carolina resident, and the chair is delivered to the customer in Lexington County. Since the retailer

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<sup>6</sup> South Carolina Revenue Ruling #18-15.

<sup>7</sup> For information on economic nexus standards in South Carolina for out-of-state retailers, see SC Revenue Ruling #18-14 and Chapter 13 of this manual.

has nexus with South Carolina, the retailer is responsible for collecting and remitting Lexington County's local sales and use tax.<sup>8</sup>

**In-State Retailer:** A retailer located in Greenville County sells plantation shutters to a customer located in Charleston County. The retailer delivers the shutters to the customer in Charleston using its own truck. Since the retailer has physical nexus with South Carolina, the retailer is responsible for collecting and remitting Charleston County's local sales and use tax.<sup>9</sup>

The retailer will be liable for the tax if the retailer fails to remit the tax when it has nexus with South Carolina. If, upon being audited, it is found a retailer has nexus with the state so as to require remittance of a local jurisdiction's sales and use tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

## **E. Purchasers - Reporting Requirements**

Purchases of tangible personal property (not for resale) first stored, used or consumed in a local tax jurisdiction are subject to the local use tax. Such purchases are to be reported by county and/or municipality where the property is first stored, used, or consumed using the applicable form (*e.g.*, ST-389, UT-3) or through one of the Department's electronic filing and payment systems. Information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality can be found on Form ST-389 and the Department's electronic filing and payment systems.

**Note:** The purchaser is not liable for a jurisdiction's local use tax if he takes delivery in another jurisdiction and pays the other jurisdiction's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the full local use tax due.

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<sup>8</sup> If, in this example, the retailer did not establish nexus with South Carolina, but had voluntarily registered with the Department for a retail license, the retailer would still be responsible for collecting and remitting Lexington County's local sales and use tax.

<sup>9</sup> If, in this example, the retailer did not establish nexus with South Carolina, but had voluntarily registered with the Department for a retail license, the retailer would still be responsible for collecting and remitting Charleston County's local sales and use tax.

## **F. Transactions Exempt from Local Sales and Use Taxes**

While most local sales and use taxes provide the same exemptions for certain sales and purchases, there are some differences. Exhibit A of this chapter provides guidance concerning the various types of local sales and use taxes collected by the Department and the types of exemptions allowed under each tax.



## **Exhibit A**

### **Local Tax Charts and Transactions Exempt from Local Sales and Use Taxes as of May 1, 2020**

The most current version of this information, as of the date of this publication, is South Carolina Information Letter #20-2. This information letter was issued to reflect that Orangeburg County's Capital Projects Tax, which expired on April 30, 2020, was re-imposed beginning May 1, 2020.

As of the date of this publication, the Capital Projects Taxes in Bamberg County, Lee County, and Marion County, which are set to expire on April 30, 2021, will be re-imposed beginning May 1, 2021. An additional information letter will be issued to reflect these changes.

These information letters can be found on the Department's website ([dor.sc.gov](http://dor.sc.gov)).



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

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SC INFORMATION LETTER #20-2

**SUBJECT:** Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax  
Chart and Exemption Information  
(Sales and Use Tax)

**EFFECTIVE DATE:** May 1, 2020

**SUPERSEDES:** SC Information Letter #19-16

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2014)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

The South Carolina Code of Laws allows the imposition of various types of local sales and use taxes. Citizens of a county, depending upon the needs within the county, may impose one or several local sales and use taxes. Municipal councils, or the citizens of a municipality, may impose a sales and use tax<sup>1</sup> for tourism development if the municipality is located in a county from which revenues from the state accommodations tax are at least \$14 million in a fiscal year.

While most of these local sales and use taxes provide the same exemptions for certain sales and purchases, there are some differences. Attached are three charts that provide guidance concerning the various types of local sales and use taxes collected by the Department and the types of exemptions allowed under each tax. These charts only address the general local sales and use taxes collected by the Department on behalf of the counties, municipalities, school districts, and the Catawba Indian tribal government. They do not address the local taxes imposed on sales of accommodations<sup>2</sup> or on sales of prepared meals<sup>3</sup> that are collected directly by the counties or municipalities.

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<sup>1</sup> This municipal sales and use tax is actually a fee (Local Option Tourism Development Fee) imposed under Article 9 of Chapter 10, Title 4. For purposes of simplicity, this fee is referred to as a sales and use tax in this information letter.

<sup>2</sup> Code Sections 6-1-500 through 6-1-570 provide for local accommodations taxes, and Code Sections 6-1-610 through 6-1-660 provide for beach preservation fees.

<sup>3</sup> Code Sections 6-1-700 through 6-1-770 provide for a local hospitality tax.

**Note: This information letter is effective May 1, 2020. It is being issued to reflect that Orangeburg County's Capital Projects Tax, which expires on April 30, 2020, will be re-imposed beginning May 1, 2020.**

**As of the date of this information letter, certain other county local sales and use taxes will be re-imposed in 2021.<sup>4</sup> An additional information letter will be issued to reflect these changes.**

### **CHART 1: COUNTY SALES AND USE TAXES**

(See "Types of Exemptions" section below for a brief description of each exemption listed.)

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
<i>Abbeville</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
<i>Aiken</i>	Capital Projects 5/1/19	Yes	Yes	No	Yes	Yes	Yes
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes
<i>Allendale</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
<i>Anderson</i>	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes
<i>Bamberg</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes
<i>Barnwell</i>	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
<i>Beaufort</i>	Transportation 5/1/19	Yes	Yes	No	Yes	No	Yes

<sup>4</sup> The Capital Projects Taxes in Bamberg County, Lee County, and Marion County, which are set to expire on April 30, 2021, will be re-imposed beginning May 1, 2021.

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	Transportation 5/1/16	Yes	Yes	No	Yes	No	Yes
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/19	Yes	Yes	No	Yes	Yes	Yes
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes
	Ed. Capital Imp. 1/1/17	Yes	Yes	No	Yes	Yes	Yes
	Transportation 5/1/17	Yes	Yes	No	Yes	No	Yes
Cherokee	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes
Chester	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 10/1/15	Yes	Yes	No	Yes	Yes	Yes
Chesterfield	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	School District 9/1/00	Yes	Yes	No	Yes	Yes	Yes
Clarendon	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	School District 6/1/04	Yes	Yes	No	Yes	No - effective 7/1/05	Yes
Colleton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/15	Yes	Yes	No	Yes	Yes	Yes
Darlington	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	Ed. Capital Imp. 3/1/17	Yes	Yes	No	Yes	Yes	Yes

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Dillon	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes
Dorchester	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes
Edgefield	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
Fairfield	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes
Florence	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes
Georgetown	No Local Sales and Use Tax is Imposed in this County						
Greenville	No Local Sales and Use Tax is Imposed in this County						
Greenwood	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
Hampton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes
Horry	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes
	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
Jasper	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	School District 12/1/02	Yes	Yes	No	Yes	Yes	Yes
	Transportation 5/1/17	Yes	Yes	No	Yes	No	Yes
Kershaw	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	Ed. Capital Imp. 3/1/17	Yes	Yes	No	Yes	Yes	Yes
Lancaster	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/16	Yes	Yes	No	Yes	Yes	Yes

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Laurens	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes
Lee	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes
Lexington	School District 3/1/19	Yes	Yes	No	Yes	Yes	Yes
Marion	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes
Marlboro	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
	School District 2/1/13	Yes	Yes	No	Yes	Yes	Yes
McCormick	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
Newberry	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
Oconee	No Local Sales and Use Tax is Imposed in this County						
Orangeburg	Capital Projects 5/1/20	Yes	Yes	No	Yes	Yes	Yes
Pickens	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes
Richland	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes
Saluda	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/19	Yes	Yes	No	Yes	Yes	Yes
Spartanburg	Capital Projects 5/1/18	Yes	Yes	No	Yes	Yes	Yes

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Sumter	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/16	Yes	Yes	No	Yes	Yes	Yes
Union	Local Option 5/1/17	Yes	Yes	Yes	Yes	No	Yes
Williamsburg	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes
	Capital Projects 5/1/17	Yes	Yes	No	Yes	Yes	Yes
York	Capital Projects 5/1/18	Yes	Yes	No	Yes	Yes	Yes

## CHART 2: CATAWBA INDIAN RESERVATION TRIBAL TAX

(See “Types of Exemptions” section below for a brief description of each exemption listed.)

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Catawba Indian Reservation	Tribal Tax (See Notes #1 and #2)	Yes	See Note #2	See Note #2	Yes	See Note #2	See Note #2

## CHART 3: MUNICIPAL SALES AND USE TAXES – LOCAL TOURISM DEVELOPMENT SALES AND USE TAX

(See “Types of Exemptions” section below for a brief description of each exemption listed.)

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
MUNICIPALITY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS
Myrtle Beach	Tourism Development 8/1/19	Yes	Yes	No	Yes	Yes	Yes

## **TYPES OF LOCAL SALES AND USE TAXES:**

**Local Option:** The local option sales and use tax is authorized under Code Section 4-10-10 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to reduce the property tax burden on persons in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

**Capital Projects:** The local capital projects sales and use tax is authorized under Code Section 4-10-300 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

**Transportation:** The local transportation projects sales and use tax is authorized under Code Section 4-37-30 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

**Personal Property Tax Relief:** The personal property tax relief sales and use tax is authorized under Code Section 4-10-510 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the most recently completed fiscal year. **As of the date of this information letter, this tax is not being imposed.**

**Local Property Tax Credits:** The local option sales and use tax for local property tax credits is authorized under Code Section 4-10-720 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax and is collected by the Department of Revenue on behalf of these counties. **As of the date of this information letter, this tax is not being imposed.**

**Education Capital Improvement Sales and Use Tax:** The school district or school districts within a county may impose a 1% sales and use tax within the county for specific education capital improvements for the school district. The tax is authorized under Code Section 4-10-410 et seq. and must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum.



The General Assembly has established several criteria that make a county or school district eligible to impose this tax. The county or school district must meet only one of these criteria, established in Code Section 4-10-470, in order for the tax to be imposed within the county. Depending on the criteria met, this tax may be imposed for up to 15 years.

**School District Taxes:** The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements. These taxes are imposed countywide, whether imposed by the county or one or more school districts.

As of the date of this information letter, these school district taxes are being imposed at a rate of 1%:

<u>County</u>	<u>Act Authorizing Tax</u>
Chesterfield	Act No. 441 of 2000
Clarendon	Act No. 355 of 2004 and Act No. 195 of 2005
Dillon	Act No. 137 of 2007
Jasper	Act No. 146 of 2001
Lexington	Act No. 378 of 2004, Act No. 88 of 2011, and Act No. 278 of 2018
Marlboro	Act No. 204 of 2005

**Catawba Indian Tribal Tax:** The Catawba Indian Reservation is located in Lancaster County, where the general, combined sales and use tax rate on sales of tangible personal property is 8%, and York County, where the general, combined sales and use tax rate is 7%. Code Section 27-16-130(H) contains the specific sales and use tax provisions.

The tribal sales tax is administered and collected by the Department. The tribal use tax is administered and collected by the Catawba Indian Tribe. For additional information on the Catawba Indian Tribal Tax, including information on the specific tax rates for sales of accommodations and unprepared food, see SC Revenue Ruling #98-18 and Notes #1 and #2 at the end of this information letter.

**Tourism Development Tax:** The local tourism development sales and use tax is authorized under Code Section 4-10-910 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax and may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least \$14 million in a fiscal year. This tax may be imposed by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council. The tax is imposed specifically for tourism advertisement and promotion directed at nonresidents of South Carolina; however, in the third and subsequent years of this tax, a portion of the tax may be used for certain property tax rollbacks. The tax is collected by the Department of Revenue on behalf of these municipalities.

## **REMITTANCE OF LOCAL SALES AND USE TAXES BY RETAILERS:**

For information on when a retailer is required to remit a local sales and use tax, see SC Revenue Ruling #18-15.

## **TYPES OF EXEMPTIONS:**

**State Exemptions - 12-36-2120 and 12-36-2130:** Except for sales of unprepared food exempt from the 6% state sales and use tax under Code Section 12-36-2120(75), sales of tangible personal property exempt from the State sales and use tax are exempt from the local sales and use tax if marked “Yes” in this column of the above charts.

Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled “Exemption for Certain Food Sales.”

**Exemption for Maximum Tax Items - Code Section 12-36-2110:** Sales of items subject to a maximum tax under the State sales and use tax law [i.e., aircraft, motor vehicles, motorcycles, boats, trailers and semitrailers pulled by truck tractors,<sup>5</sup> horse trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), self-propelled light construction equipment, unassembled aircraft, manufactured homes, musical instruments and office equipment purchased by certain religious organizations and fire safety education trailers] are exempt from the local sales and use tax if marked “Yes” in this column of the above charts.

Note: Code Section 12-36-2120(83) exempts from state and local sales and use tax the sale or purchase of each vehicle or other item that is subject to an infrastructure maintenance fee under Code Section 56-3-627. The infrastructure maintenance fee is due when the vehicle or other item is first registered with the South Carolina Department of Motor Vehicles pursuant to Chapter 3 of Title 56. See SC Information Letter #17-10 and SC Revenue Ruling #18-1.

**Exemption for Casual Excise Tax Items - Code Section 12-36-1710:** Sales of items subject to the casual excise tax under Code Section 12-36-1710 through Code Section 12-36-1740 (i.e., boats, motors,<sup>6</sup> and airplanes required to be registered, titled, or licensed) are exempt from the local sales and use tax if marked “Yes” in this column of the above charts.

**Exemption for Food Stamp Purchases:** Sales of food purchased with food stamps are exempt from the State sales and use tax; therefore, such sales are exempt from the local sales and use tax if marked “Yes” in this column of the above charts.

**Exemption for Certain Food Sales:** Sales of certain foods are exempt from the local sales and use tax if marked “Yes” in this column of the above charts. Sales of foods which are eligible to be purchased with United States Department of Agriculture food stamps come under this exemption. This exemption applies to everyone, not just persons using food stamps.

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<sup>5</sup> Pole trailers and trailers that can be pulled by vehicles other than truck tractors are not maximum tax items under Code Section 12-36-2110 and are subject to the local sales and use tax.

<sup>6</sup> As of the date of this information letter, all casual excise tax items listed under Code Section 12-36-1710, except for boat motors not attached to a boat at the time of sale, are also maximum tax items under Code Section 12-36-2110. Therefore, boat motors not attached to a boat at the time of sale are exempt from local sales and use taxes only if there is a “Yes” in the “Casual Excise Items” column of the above charts.

Foods which may be purchased with food stamps and are exempt from these local sales and use taxes include:

- \* Any food intended to be eaten at home by people, including snacks, beverages and seasonings
- \* Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- \* Cold items, which may include salads or sandwiches, intended to be eaten at home by people

Items which cannot be purchased with food stamps and are, therefore, subject to these local sales and use taxes are:

- \* Alcoholic beverages, such as beer, wine, or liquor
- \* Hot beverages ready to drink, such as coffee
- \* Tobacco
- \* Hot foods ready to eat
- \* Foods designed to be heated in the store
- \* Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court
- \* Vitamins and medicines (Note: Sales of certain medicines are exempt from the State sales and use tax, and therefore, are also exempt from all local sales and use taxes.)
- \* Pet food
- \* Any non-food items such as tissue, soap or other household goods

For more detailed information on this food exemption, see SC Regulation 117-337.

**“Grandfather Clause” Exemption for Certain Purchases by Construction Contractors:**

All the local sales and use taxes discussed in this information letter exempt purchases of building materials for use under a construction contract if both of the following conditions are met:

- A. 1. the construction contract is executed before the imposition date; or
  - 2. a written bid is submitted before the imposition date culminating in a construction contract entered into before or after the imposition date; and
- B. a verified copy of the contract is mailed within 6 months of the imposition date to:

SC Department of Revenue  
P.O. Box 125  
Columbia, SC 29214-0400

A "verified copy" is a copy accompanied by a statement, signed under penalties of perjury, that it is true and correct. If the contractor is a corporation, the statement is to be signed by an officer of the corporation or an employee authorized to sign. If the contractor is a partnership, the statement is to be signed by a general partner. If the contractor is a sole proprietorship, the owner is to sign.

**Special Exemption Certificate.** In order for a contractor to purchase building materials for a particular contract free of the local tax, the contractor must complete Form ST-10-C ("Application for Exemption from Local Tax for Construction Contractors") and submit it to the Department of Revenue. If the Department determines the contract in question meets the above requirements, the contractor will be issued a special exemption certificate (Form ST-585). The certificate may only be used to purchase building materials for the contract for which it is issued and may not be used to purchase anything other than building material. If the contractor uses this certificate to make purchases free of the local tax, upon which the tax should have been paid, then the contractor will be held liable for the tax. **Also, the certificate does not allow the contractor to make purchases of building materials free of the State tax.**

An exemption certificate (Form ST-585) issued by the Department of Revenue to a prime contractor under this exemption may not be used by a subcontractor nor may a prime contractor use a subcontractor's exemption certificate. Each contractor must obtain his own certificate for each construction contract.

## **CATAWBA INDIAN TRIBAL TAX – NOTES #1 and #2:**

**Note #1:** Whether the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation applies is determined by the Catawba Indian Claims Settlement Act (Chapter 16, Title 27, South Carolina Code of Laws). The provisions specific to sales and use tax are in Code Section 27-16-130(H).

The Catawba Tribal sales and use tax expires on November 28, 2092.

The following chart provides a summary of these provisions:

<b><u>Delivery on the Reservation From:</u></b>	<b>Type Tax Applicable</b>	<b><u>Administered and Collected By:</u></b>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (Local Taxes Do Not Apply.)	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (Local Taxes Do Not Apply.)	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

\* Lancaster County imposes a 1% Local Option Tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects Tax. These local taxes are in addition to the State sales and use tax.

As of the date of this information letter, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 1% for sales of unprepared foods<sup>7</sup>

For sales (deliveries) made on the Reservation within York County:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

For additional information, see SC Revenue Ruling #98-18.

**Note #2: Maximum Tax Items:** For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5% in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in Code Section 12-36-2110.

**Casual Excise Tax Items:** Counties imposing a local sales and use tax that does not exempt casual excise tax items will impose the local tax on sales and purchases of boat motors not attached to a boat at the time of sale.

Therefore, for sales (deliveries) of boat motors made on the Reservation within Lancaster and York Counties, the tribal sales and use tax rate is 7% (since only the local option tax in Lancaster County exempts casual excise tax items).

**“Grandfather Clause” Exemption for Certain Purchases by Construction Contractors:** As a result of any increase in the tribal sales and use tax rate due to the imposition of a new local sales and use tax in either Lancaster County or York County, there is an exemption from the portion of the tribal sales and use tax represented by the new local sales and use tax for certain purchases by construction contractors. For more information about this partial exemption, see the discussion earlier in this information letter concerning *“Grandfather Clause” Exemption for Certain Purchases by Construction Contractors* and the *Special Exemption Certificate*.

**These charts only address the general local option taxes collected by the Department of Revenue on behalf of the counties, municipalities, school districts, and the Catawba Indian tribal government. They do not address the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.**

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<sup>7</sup> The Capital Projects Tax in Lancaster County exempts sales of unprepared food; however, the 1% Local Option Tax does not exempt sales of unprepared food.

## Chapter 13

### Nexus

#### A. General Information

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out-of-state businesses.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax. This decision overturned the Court's longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), which allowed states to collect sales and use tax only from retailers with a physical presence.

Below is a summary of South Carolina's economic nexus and physical nexus standards for sales and use tax.

#### B. Economic Nexus Standards<sup>1</sup>

A remote seller (*i.e.*, a retailer without a physical presence in South Carolina) whose gross revenue from sales of tangible personal property,<sup>2</sup> products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina. A remote seller who has economic nexus with South Carolina is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

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<sup>1</sup> The Department issued SC Revenue Ruling #18-14 to provide written guidance for remote sellers (*i.e.*, persons engaged in the business of selling tangible personal property at retail without a physical presence in South Carolina) regarding sales and use tax registration and remittance in light of *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018).

<sup>2</sup> Code Section 12-36-60 defines "tangible personal property," in part, as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law]." For services that are specifically subject to the sales and use tax, and therefore by definition are "tangible personal property," see Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

The \$100,000 economic nexus standard for a remote seller includes:

- the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and
- the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Economic Nexus Established in Calendar Year 2017, or from January 1, 2018 through September 30, 2018

Remote sellers who established economic nexus with South Carolina in calendar year 2017, or from January 1, 2018 through September 30, 2018, were required to obtain a retail license from the Department by November 1, 2018 and to remit the sales and use tax for all taxable sales made into South Carolina on and after November 1, 2018. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before November 1, 2018.

Economic Nexus Established on or after October 1, 2018

Remote sellers who establish economic nexus with South Carolina on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the first day of the second calendar month after economic nexus is established.<sup>3</sup> These remote sellers must obtain a retail license from the Department by the first day of the second calendar month after economic nexus is established. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before the first day of the second calendar month after economic nexus is established.

Example: Assume a remote seller establishes economic nexus in South Carolina on December 10, 2019 (*i.e.*, it exceeds \$100,000 in gross revenue from South Carolina). The remote seller must: (1) obtain a retail license by February 1, 2020 (the first day of the second calendar month after economic nexus is established) and (2) collect and remit the sales and use tax for all taxable sales made into South Carolina on and after February 1, 2020.

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<sup>3</sup> This is approximately 30 days from the end of the month in which economic nexus is established.

### Failure to Timely Register and Remit Tax

Remote sellers who establish economic nexus with South Carolina as noted above, but who do not timely obtain a retail license from the Department are subject to sales and use tax assessment, penalties, and interest for all taxable sales made into South Carolina beginning with the date the remote seller was required to obtain a retail license.

For more information regarding economic nexus in South Carolina, see Exhibit A (SC Revenue Ruling #18-14, “Retailers Without a Physical Presence – Remote Sellers – Economic Nexus”) and Exhibit B (Remote Sellers Frequently Asked Questions) at the end of this chapter.

## **C. Physical Nexus Standards<sup>4</sup>**

Physical presence can be established by a retailer maintaining a place of business in South Carolina. This includes any retailer having or maintaining, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within South Carolina under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business in South Carolina.

South Carolina Revenue Ruling #14-4 is the Department’s most recent guidance on physical presence nexus for sales and use tax purposes. However, it is important to note that since developments in this area are constantly taking place, any response in SC Revenue Ruling #14-4 is subject to change due to a future statute, regulation, court decision, or advisory opinion.

The following pages contain a list of examples of how physical presence can be established in South Carolina. Each example is based on the following assumptions:

- The business is selling tangible personal property at retail to residents or others in South Carolina;
- Each specific example by itself is the only possible nexus creating activity or relationship a business has in South Carolina; and
- The activities described are not “de minimis.”

A business that performs any of the below activities or has any of the below property or personnel in the state has physical nexus with South Carolina, even if the activity is the sole activity in South Carolina.

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<sup>4</sup> A retailer that does not have economic nexus with South Carolina may still be responsible for collecting and remitting state and local sales and use tax if the retailer has established physical nexus with South Carolina. The discussion and examples in Section C only involve retailers who do not have economic nexus with South Carolina as discussed in Section B above.



## **EXAMPLES OF ACTIVITIES CREATING PHYSICAL NEXUS IN SOUTH CAROLINA**

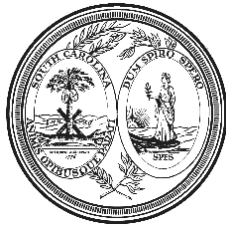
<p><b>Activities of an Employee or Third Party (<i>e.g.</i>, Sales Representative, Independent Contractor or Affiliated Company)</b></p> <ul style="list-style-type: none"> <li>• Presence of an employee, representative, or independent contractor soliciting or selling in South Carolina</li> <li>• Authorizing employee or third party to install, deliver, service, or repair merchandise in South Carolina or hiring independent contractor to perform warranty or repair services on tangible personal property in South Carolina</li> <li>• Using employee or third party to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina</li> <li>• Using a telemarketing firm with a South Carolina office</li> <li>• Collecting delinquent accounts using a collection agency in South Carolina or hiring attorneys or other third parties to file collection suits in South Carolina</li> <li>• In-state representative maintaining an in-home office</li> </ul>	<ul style="list-style-type: none"> <li>• Affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and:             <ul style="list-style-type: none"> <li>○ the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks, or logos; or</li> <li>○ uses the South Carolina affiliate to accept returns, take orders, perform customer service, or distribute advertising materials on its behalf</li> </ul> </li> <li>• Selling gift cards in affiliated South Carolina stores</li> <li>• Selling tangible personal property from outside South Carolina (<i>e.g.</i>, by telephone, over the internet, or otherwise) and:             <ul style="list-style-type: none"> <li>○ authorizing an employee or third party to solicit sales in South Carolina; or</li> <li>○ shipping its product for distribution to a third-party distributor located in South Carolina that performs labeling, packaging, and shipping functions</li> </ul> </li> <li>• Making remote sales of “canned software,” that constitutes tangible personal property, to South Carolina residents and then sending a representative to customize it to meet the customer’s specific needs or to provide other information technology services</li> </ul>
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**EXAMPLES OF ACTIVITIES CREATING PHYSICAL NEXUS IN SOUTH CAROLINA**

<p><b>Property in South Carolina</b></p> <ul style="list-style-type: none"> <li>• Maintaining or using a place of business in South Carolina for:             <ul style="list-style-type: none"> <li>○ selling tangible personal property; or</li> <li>○ storing tangible personal property</li> </ul> </li> <li>• Maintaining inventory</li> <li>• Maintaining or using a distribution facility</li> <li>• Maintaining tangible personal property for lease through a representative</li> <li>• Existence of unrelated in-state office (<i>e.g.</i>, advertising)</li> <li>• Operating as mail-order catalog seller with property or solicitors in South Carolina</li> <li>• Drop-shipping catalogs in South Carolina, for mailing to residents within South Carolina</li> <li>• Selling tangible personal property from outside South Carolina (<i>e.g.</i>, by telephone, over the internet, or otherwise) and:             <ul style="list-style-type: none"> <li>○ delivering merchandise to customers in South Carolina in returnable containers;</li> <li>○ delivering merchandise to customers in South Carolina by the business' tractor-trailers or railcars and leaving the trailer or railcar with the customer for a certain period of time; or</li> <li>○ providing in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries</li> </ul> </li> </ul>	<p><b>Delivery</b></p> <ul style="list-style-type: none"> <li>• In-state delivery via company-owned vehicles</li> <li>• Presence of a representative to deliver merchandise in South Carolina</li> <li>• Delivering merchandise in South Carolina by means other than common carrier or the U.S. Postal Service</li> </ul>
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## **Exhibit A**

### **SC Revenue Ruling #18-14: Retailers Without a Physical Presence (“Remote Sellers”) – Economic Nexus**



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #18-14

**SUBJECT:** Retailers Without a Physical Presence ("Remote Sellers") - Economic Nexus  
(Sales and Use Tax)

**EFFECTIVE DATE:** For sales made on or after November 1, 2018, unless a later date is otherwise provided in this advisory opinion.

**SUPERSEDES:** SC Revenue Advisory Bulletin #01-7 and all previous documents and oral directives in conflict herewith.

**MODIFIES:** SC Revenue Ruling #14-4 and all previous documents and oral directives in conflict herewith.

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

## I. OVERVIEW OF NEXUS AND *WAYFAIR* DECISION

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out-of-state businesses. Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax. This decision overturned the Court's longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), which allowed states to collect sales and use tax only on retailers with a physical presence.

South Carolina Code Section 12-36-70 defines “retailer” and “seller” to include persons not maintaining a physical presence in South Carolina, and reads in part:

“Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

\* \* \*

(2)(a) maintaining a place of business or qualifying to do business in this State; or  
(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State (Emphasis added).

South Carolina has not enforced this provision against retailers without a physical presence because of the constitutional nexus restrictions under *National Bellas Hess* and *Quill*.<sup>1</sup> Because the United States Supreme Court has reversed its longstanding position and eliminated the physical presence requirement, South Carolina will require retailers who do not have a physical presence in South Carolina but who establish an economic presence as outlined below to remit the sales and use tax on a prospective basis beginning **November 1, 2018, unless a later date is otherwise provided in this advisory opinion.**

The purpose of this advisory opinion is to provide written guidance for retailers (*i.e.*, persons engaged in the business of selling tangible personal property at retail) without a physical presence in South Carolina regarding sales and use tax registration and remittance in light of *Wayfair*.

**For purposes of this advisory opinion, a retailer with no physical presence in South Carolina is referred to as a “remote seller” (*e.g.*, marketplace,<sup>2</sup> online, catalog, or mail order retailer). In addition, a remote seller includes any related entity assisting the remote seller in sales, storage, distribution, payment collection, or in any other manner with respect to the remote seller.<sup>3</sup>**

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<sup>1</sup> See SC Revenue Procedure #92-2, “Filing Requirements Where Nexus Is an Issue;” SC Information Letter #92-19, “Nexus - *Quill Corp. v. North Dakota*,” and SC Information Letter #90-29, “Nexus - Economic Presence.”

<sup>2</sup> A “marketplace” is a person engaged in the business of facilitating a retail sale of tangible personal property by (1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur and (2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, regardless of whether the marketplace receives compensation or other consideration in exchange for its services. A marketplace includes any related entity assisting the marketplace in sales, storage, distribution, payment collection, or in any other manner with respect to the marketplace.

A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television broadcast, or similar place, medium, or forum.

<sup>3</sup> See the definition of the term “person” in Code Section 12-36-30, which includes “any group or combination acting as a unit.”

**The prospective treatment outlined in this advisory opinion is limited to remote sellers and does not apply to retailers who have a physical presence in South Carolina or retailers currently licensed with the Department for sales and use tax purposes.**

Note: This advisory opinion reflects the Department’s official position at this time. Since developments in this area are taking place, any guidance is subject to change due to a future statute, regulation, court decision, or advisory opinion. Any change in South Carolina’s position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

## **II. SUBSTANTIAL NEXUS STANDARDS FOR REMOTE SELLERS**

In accordance with Code Section 12-36-70 and the principles of *Wayfair*, a remote seller whose gross revenue from sales of tangible personal property,<sup>4</sup> products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

## **III. CALCULATION OF THE \$100,000 ECONOMIC NEXUS STANDARD**

The \$100,000 economic nexus standard for a remote seller includes:

- ◆ the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- ◆ the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and,
- ◆ the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Example 1 – Sales on Own Website: Assume a remote seller makes sales into South Carolina via his own website. His annual South Carolina sales total \$100,001. These sales consist of \$75,000 in taxable retail sales and \$25,001 in exempt retail sales and wholesale sales. Since the remote seller’s total gross revenue from all sales into South Carolina exceeds \$100,000, the remote seller meets South Carolina’s economic nexus standard and he is required to obtain a retail license and remit the sales and use tax to the Department.

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<sup>4</sup> Code Section 12-36-60 defines “tangible personal property,” in part, as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law].” For services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

Example 2 – Sales on Own Website and Via a Marketplace: Assume a remote seller makes sales on his own website. He also lists his products for sale on a marketplace that has economic nexus with South Carolina. The remote seller sells \$75,000 of items into South Carolina via his own website. A marketplace makes sales of \$50,000 of products owned by the remote seller into South Carolina, and the marketplace collects or processes customer payments from these marketplace sales.

The calculation of the remote seller's economic nexus standard includes the gross revenue from property owned by the remote seller but sold via the marketplace. Since the remote seller's total gross revenue from South Carolina exceeds \$100,000 (\$75,000 + \$50,000), the remote seller meets South Carolina's economic nexus standard. He is required to obtain a retail license and remit the sales and use tax to the Department on his "gross proceeds of sales"<sup>5</sup> of \$75,000.

Since South Carolina's economic nexus standard is based on "gross revenue," revenue from the sales made via the marketplace in this example (Example 2) is included in the calculation for determining if the remote seller has established economic nexus with South Carolina. However, under South Carolina sales and use tax law, the sales made via the marketplace are sales by the marketplace, and the marketplace is required to obtain a retail license and collect and remit the sales and use tax on the marketplace's "gross proceeds of sales," which includes the \$50,000 in sales of products owned by the remote seller but sold by the marketplace.

#### **IV. REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITH ECONOMIC NEXUS**

In accordance with Code Section 12-36-70, Code Section 12-4-320, and the principles of *Wayfair*, remote sellers with economic nexus must remit the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**, as provided below. Remote sellers who are not currently licensed for sales and use tax purposes with the Department should follow the guidelines below.

##### **A. Guidelines for Timely Registration and Remittance of Tax**

##### **1. Economic Nexus in Calendar Year 2017, or from January 1, 2018 through September 30, 2018**

Remote sellers having economic nexus with South Carolina in calendar year 2017, or from January 1, 2018 through September 30, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**. These remote sellers must obtain a retail license from the Department by November 1, 2018. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales by these remote sellers before November 1, 2018.

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<sup>5</sup> "Gross proceeds of sales" is defined in Code Section 12-36-90. Generally, "gross proceeds of sales" is the value proceeding or accruing from the sale, lease, or rental of tangible personal property and, therefore, is the total amount charged in conjunction with the sale or rental of tangible personal property. However, see Code Section 12-36-90(2) for charges that are not included in "gross proceeds of sales." For purposes of this advisory opinion, "gross proceeds of sales" applies to sales tax transactions and use tax transactions.

## **2. Economic Nexus Established on or after October 1, 2018**

Remote sellers who establish economic nexus with South Carolina on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the **first day of the second calendar month after economic nexus is established**.<sup>6</sup> These remote sellers must obtain a retail license from the Department by the first day of the second calendar month after economic nexus is established. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before the first day of the second calendar month after economic nexus is established.

Example: Assume a remote seller establishes economic nexus in South Carolina on December 10, 2018 (*i.e.*, it exceeds \$100,000 in gross revenue from South Carolina). The remote seller must: (1) obtain a retail license by February 1, 2019 (the first day of the second calendar month after economic nexus is established) and (2) collect and remit the sales and use tax for all taxable sales made into South Carolina on and after February 1, 2019.

### **B. Failure to Timely Register and Remit Tax**

Remote sellers who establish economic nexus with South Carolina as noted above, but who do not timely obtain a retail license from the Department are subject to sales and use tax assessment, penalties, and interest for all taxable sales made into South Carolina beginning with the date the remote seller was required to obtain a retail license.

## **V. VOLUNTARY REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITHOUT ECONOMIC NEXUS**

Remote sellers who are not required to collect and remit the South Carolina sales and use tax may voluntarily obtain a retail license from the Department at any time and remit the sales and use tax for all taxable sales made into South Carolina. The collection and remittance of the sales and use tax by the remote seller applies to all taxable sales made in South Carolina on and after the effective date of the retail license. The voluntary filer must continue to collect and remit the tax for all tax periods until the remote seller notifies the Department that the retail license is being closed.

## **VI. SUBMITTING AN APPLICATION FOR A RETAIL LICENSE**

Remote sellers who have established economic nexus with South Carolina, or who wish to voluntarily collect and remit the South Carolina sales and use tax, must obtain a retail license.

The Department's online portal for obtaining a retail license can be found at [MyDORWAY.dor.sc.gov](http://MyDORWAY.dor.sc.gov). Remote sellers using the online portal may submit the electronic application, along with the \$50 fee, **beginning September 28, 2018**.

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<sup>6</sup> This is approximately 30 days from the end of the month in which economic nexus is established.



The Department's paper application for a remote seller's retail license is South Carolina Form DOR-111RS, "Remote Seller Sales and Use Tax Registration." This form is on the Department's website ([dor.sc.gov](http://dor.sc.gov)). Remote sellers using this form may submit the paper application, along with the \$50 fee, at any time.

A remote seller who has obtained a retail license from the Department must file a sales and use tax return (paper or electronic) and report its total gross proceeds of sales for each month it is licensed beginning with the effective date of the retail license.

## **VII. ADDITIONAL INFORMATION**

### **1. Filing Requirements**

Remote sellers licensed with the Department must file a monthly sales and use tax return. Each monthly return is due by the 20<sup>th</sup> day of the following month. Returns must be filed for all months, even in those months the taxpayer has no sales into South Carolina or has no tax due. Exception: If a remote seller's total state and local sales and use tax due does not exceed \$100 for any month, then the remote seller may file quarterly upon approval by the Department.

### **2. Information for Remote Sellers**

Remote sellers may obtain additional information on the Department's website ([dor.sc.gov](http://dor.sc.gov)). The website provides information on the sales and use tax base, local sales and use taxes, exemptions and exclusions, obtaining a retail license, forms, and frequently asked questions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
\_\_\_\_\_  
W. Hartley Powell, Director

September 18 \_\_\_\_, 2018  
Columbia, South Carolina

## **Exhibit B**

### **Remote Sellers Frequently Asked Questions**

These FAQs are divided into the following categories:

1. General Questions
2. Economic Nexus Standard for Remote Sellers
3. Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax – Economic Nexus
4. Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax – Physical Nexus
5. Local Tax Nexus, Collection, and Remittance
6. Taxable Transactions
7. Exemptions and Exclusions
8. State and Local Tax Rates
9. Retail Licenses and Filing Requirements
10. South Carolina Purchasers

Note: The establishment of economic nexus with South Carolina requires an understanding of various terms – most of which are defined in the South Carolina sales and use tax law. The definitions for the terms “remote seller,” “marketplace facilitator,” “gross revenue,” and “tangible personal property” are summarized in these FAQs.

## **1. GENERAL QUESTIONS**

### **What is the effect of the *Wayfair* decision in South Carolina?**

On June 21, 2018, in *South Dakota v. Wayfair*, the U.S. Supreme Court overturned the 1992 case of *Quill v. North Dakota*, ruling that out-of-state sellers with no physical presence in a state can be required to collect and remit sales and use taxes in states where they meet certain economic thresholds.

In South Carolina, a remote seller whose gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax. South Carolina's economic nexus standard applies to sales made by remote sellers on and after **November 1, 2018**. For more details as to the effective date of South Carolina's economic nexus standards, see the section of these frequently asked questions entitled: "Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax."

### **Who is a "remote seller"?**

A remote seller is an out-of-state retailer (*i.e.*, a person engaged in the business of selling tangible personal property at retail) that has no physical presence in South Carolina.

### **Is a "marketplace facilitator" without a physical presence in South Carolina a "remote seller"?**

Yes. Code Section 12-36-70 defines "retailer" and "seller" in part as every person operating as a marketplace facilitator. Code Section 12-36-71 defines a "marketplace facilitator" as a person engaged in the business of facilitating a retail sale of tangible personal property by (1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur and (2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, regardless of whether the person receives compensation or other consideration in exchange for his services. A marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace.

A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

For more information on marketplace facilitators, see Code Section 12-36-71 and SC Revenue Ruling #19-6, “Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations.”

**Are remote sellers currently licensed in South Carolina affected by the *Wayfair* decision?**

No. Remote sellers voluntarily licensed in South Carolina prior to the *Wayfair* decision must continue to collect and remit sales and use tax as long as they are licensed with South Carolina or meet South Carolina’s economic nexus standard.

**Are remote sellers responsible for remitting the sales and use tax on sales into South Carolina prior to the *Wayfair* decision?**

No. If a remote seller is not currently licensed with the Department and is subject to South Carolina sales and use tax only as a result of the U.S. Supreme Court’s decision in *Wayfair*, the remote seller is not required to collect and remit sales and use tax on sales that occurred prior to November 1, 2018.

**May a remote seller who does not meet the economic nexus standard for South Carolina voluntarily obtain a retail license and begin collecting the South Carolina sales and use tax?**

Yes. A remote seller who does not meet South Carolina’s economic nexus standard may voluntarily obtain a retail license and remit sales and use tax at any time.

## **2. ECONOMIC NEXUS STANDARD FOR REMOTE SELLERS**

**What is the economic nexus standard in South Carolina that will require a remote seller to obtain a retail license and begin collecting and remitting the South Carolina sales and use tax for deliveries into South Carolina?**

In South Carolina, a remote seller whose gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

**What is “gross revenue”?**

“Gross revenue” includes:

- the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;

- the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and
- the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Example 1 – Sales on Own Website: Assume a remote seller makes sales into South Carolina via his own website. His annual South Carolina sales total \$100,001. These sales consist of \$75,000 in taxable retail sales and \$25,001 in exempt retail sales and wholesale sales. Since the remote seller’s total gross revenue from all sales into South Carolina exceeds \$100,000, the remote seller meets South Carolina’s nexus standard and he is required to obtain a retail license and remit the sales and use tax to the Department.

Example 2 – Sales by Own Website and Via a Marketplace: Assume a remote seller makes sales via his own website as well as via a marketplace. The remote seller sells \$75,000 of items into South Carolina via his own website. A marketplace facilitator makes sales of \$50,000 of products owned by the remote seller and the marketplace facilitator collects or processes customer payments from these marketplace sales. The calculation of the remote seller’s economic nexus standard includes the gross revenue from property owned by the remote seller but sold via the marketplace. Since the remote seller’s total gross revenue from South Carolina exceeds \$100,000 (\$75,000 + \$50,000), the remote seller meets South Carolina’s nexus standard. He is required to obtain a retail license and remit the sales and use tax to the Department on his “gross proceeds of sales” of \$75,000.

Since South Carolina’s economic nexus standard is based on “gross revenue” and not “gross proceeds of sales,” revenue from the sales made via the marketplace in this example (Example 2) are included in the calculation for determining if the remote seller has established economic nexus with South Carolina. However, under South Carolina sales and use tax law, the sales made via the marketplace are sales by the marketplace facilitator and the marketplace facilitator is required to report and remit the sales and use tax on the marketplace facilitator’s “gross proceeds of sales,” which includes the \$50,000 in sales of products owned by the remote seller but sold by the marketplace facilitator.

### **What is the difference between “gross revenue” and “gross proceeds of sales?”**

For many remote sellers, gross revenue and gross proceeds of sales will be the same.

In general, gross revenue is all revenue from sales into South Carolina, regardless of whether the revenue is subject to the South Carolina sales and use tax. Gross revenue is used solely for determining if a remote seller has economic nexus with South Carolina. It does not determine liability for the tax.

Gross proceeds of sales is the basis or measure for the sales and use tax. It only applies to the sale of tangible personal property as defined in the South Carolina sales and use tax law.

**Example 1 – Gross Revenue and Gross Proceeds are the Same:** Assume a remote seller sells t-shirts into South Carolina for \$25 and charges \$5 for shipping via the U.S. Postal Service. The “gross revenue” and “gross proceeds of sales” are the same for this transaction - \$30.

**Example 2 - Gross Revenue and Gross Proceeds are Different:** Assume a remote seller sells software in three different ways. His gross revenue from South Carolina is as follows:

Disks and Flash drives	\$ 55,000
ASP (SaaS)	\$ 25,000
Downloads	<u>\$ 30,000</u>
Total	\$110,000

Since software sold on disks and flash drives and via an ASP (SaaS) are subject to the South Carolina sales and use tax, and software sold via downloads are not, “gross revenue” and “gross proceeds of sales” are different. Gross revenue for the remote seller in this example is \$110,000 and gross proceeds of sales is \$80,000 (\$55,000 + \$25,000). The remote seller meets South Carolina’s economic nexus standard because his “gross revenue” from South Carolina in the prior year or the current year exceeds \$100,000, but he is only required to report \$80,000 in “gross proceeds of sales” on his sales and use tax return. The South Carolina sales and use tax will be based on the \$80,000 in “gross proceeds of sales.”

**For purposes of calculating the South Carolina economic nexus standard, when is a sale deemed to occur?**

Generally, sales by remote sellers are deemed to occur upon delivery in South Carolina.

**What is “tangible personal property” for purposes of determining South Carolina’s economic nexus standard?**

“Tangible personal property” is personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, the sale or use of which is subject to tax under South Carolina’s sales and use tax law. The services specifically subject to the South Carolina sales and use tax are:

- communications,

- laundry and related services,
- furnishing of accommodations, and
- electricity.

For the services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Chapters 2 and 3 of this manual.

**Does South Carolina have a separate economic nexus standard for local sales and use tax?**

No. If a retailer has substantial nexus with South Carolina, the retailer has substantial nexus with each local jurisdiction in South Carolina for purposes of local sales and use taxes administered and collected by the Department.

**What are examples that explain common types of sales that are included when determining South Carolina’s economic nexus standard?**

Examples best illustrate the computation of the economic nexus standard for remote sellers selling various types and amounts of tangible personal property. It is important to understand that the economic nexus standard is based upon “gross revenue.” The examples assume the person is a remote seller (*i.e.*, is an out-of-state seller with no physical presence in South Carolina) that only makes the sales listed in each specific example and the product is owned by that remote seller, unless otherwise stated.

**Part A – Taxable, Exempt, and/or Wholesale Sales by Remote Seller**

<b>Type of Sales Made Via Online, Catalog, or Phone Order</b>	<b>Gross Revenue from SC in Previous Calendar Year</b>	<b>Does Remote Seller Meet SC Economic Nexus Standard?</b>
Example 1: <b><u>All taxable sales</u></b> Remote seller sells common household items via his own website or through his own catalog and telephone sales operations ( <i>e.g.</i> , furniture, pet supplies, cosmetics, jewelry, etc.).	Over \$100,000	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
	\$100,000 or less	No Remote seller is not required to, but may voluntarily, obtain a retail license and collect and remit SC sales and use tax.
Example 2: <b><u>All nontaxable sales</u></b> Remote seller sells only items that are exempt from SC sales and use tax ( <i>e.g.</i> , sales to federal government, sales of medicine by prescription, etc.).	Over \$100,000	Yes Remote seller must file “zero tax due” sales tax returns; seller may request quarterly or annual filings in lieu of monthly filings.
Example 3: <b><u>All wholesale sales</u></b> Remote seller only sells items for resale ( <i>i.e.</i> , wholesale sales). Wholesale sales are not subject to SC sales and use tax.	Over \$100,000	Yes However, since the remote seller is <u>not</u> a retailer ( <i>i.e.</i> , does not make retail sales), he is <u>not</u> required to obtain a retail license or collect SC sales and use tax.
Example 4: <b><u>Both taxable and nontaxable sales</u></b> Remote seller sells some items that are taxable and some items that are exempt from SC sales and use tax.	Exempt = \$ 99,000 Taxable = \$ <u>1,001</u> Total = \$100,001	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
Example 5: <b><u>Sales exempt from State tax, but subject to local tax</u></b> Taxpayer sells unprepared food, which is exempt from SC state sales and use tax, but is subject to local sales and use taxes in certain counties.	Over \$100,000	Yes See DOR website for local tax chart of counties imposing tax on unprepared food.



## Part B – Sales Via a Marketplace

Type of Sales of Tangible Personal Property in SC	Gross Revenue from SC in Previous Calendar Year	Does Remote Seller Meet SC Economic Nexus Standard?
<p>Example 6: <b><u>Both sales via own website and sales via marketplace sales</u></b></p> <p>Remote seller sells via his own website. He also lists his products for sale on a marketplace where the marketplace facilitator has economic nexus with South Carolina and collects or processes the customer's payment.</p>	<p>Own website sales = \$99,000</p> <p>Sales of the remote seller's product by a marketplace facilitator = \$300,000</p>	<p>Yes</p> <p>Sales of a remote seller's product by a marketplace facilitator (<i>i.e.</i>, \$300,000) and by his own website (<i>i.e.</i>, \$99,000) are used in computing the SC economic nexus standard of the remote seller. However, the remote seller is only responsible for reporting and remitting the SC sales and use tax on the \$99,000 in sales he made via his own website. The marketplace facilitator is responsible for reporting and remitting the SC sales and use tax on the \$300,000 from sales of the remote seller's products made via the marketplace.</p>
<p>Example 7: <b><u>All marketplace sales</u></b></p> <p>Remote seller <u>only</u> sells via another person's marketplace.</p>	Over \$100,000	<p>Yes</p> <p>While the remote seller has economic nexus with SC (<i>i.e.</i>, over \$100,000 in sales via another person's marketplace), the remote seller is not making retail sales under SC law and therefore is not a retailer. The remote seller is not required to obtain a retail license or collect SC sales and use tax.</p>
	\$100,000 or less	No
<p>Example 8: <b><u>Marketplace Facilitator is the remote seller</u></b></p> <p>Marketplace Facilitator sells items that it owns and items owned by many others via its website.</p>	Over \$100,000	<p>Yes</p> <p>Marketplace Facilitator must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales, including all taxable retail sales of items owned by others.</p>

## Part C – Sales of Services

Type of Sales of Tangible Personal Property in SC	Gross Revenue from SC in Previous Calendar Year	Does Remote Seller Meet SC Economic Nexus Standard?
Example 9: <b><u>All taxable services</u></b> Taxpayer sells services subject to the SC sales and use tax (e.g., certain communications services). Services that are subject to tax are those defined as “tangible personal property” under SC sales and use tax.	Over \$100,000	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
	\$100,000 or less	No Remote seller is not required to, but may voluntarily, obtain a retail license and collect and remit SC sales and use tax.
Example 10: <b><u>All nontaxable services</u></b> Taxpayer only sells services that are <u>not</u> subject to the SC sales and use tax (e.g., professional services, security monitoring, etc.). Services that are not subject to tax are those services <u>not</u> included in the definition of “tangible personal property” under SC sales and use tax law.	Over \$100,000	Yes Since the remote seller is <u>not</u> a retailer (i.e., does not make retail sales of tangible personal property as defined in SC law), he is <u>not</u> required to obtain a retail license or collect SC sales and use tax.

### 3. **EFFECTIVE DATE FOR OBTAINING A RETAIL LICENSE AND REMITTING THE SALES AND USE TAX - ECONOMIC NEXUS**

**What is the effective date for remote sellers to obtain a retail license and begin collecting and remitting sales and use tax in South Carolina following the *Wayfair* decision?**

It depends on the date the remote seller first meets the nexus threshold. Remote sellers who met South Carolina’s economic nexus standard in calendar year 2017, or from January 1, 2018 through September 30, 2018, are required to obtain a retail license from the Department and remit South Carolina sales and use taxes for all taxable sales (deliveries) beginning **November 1, 2018**.

Remote sellers who meet South Carolina’s economic nexus standard on or after October 1, 2018, are required to obtain a retail license from the Department and remit South Carolina sales and use taxes beginning the first day of the second calendar month after economic nexus is established. (This is approximately 30 days from the end of the month in which economic nexus is established.)

The remote seller is not required to collect and remit sales and use tax on sales that occurred prior to November 1, 2018.

The following chart illustrates the date a remote seller must obtain a retail license and the date the remote seller must file his first South Carolina sales and use tax return once economic nexus is established.

<b>Date economic nexus threshold is met by remote seller</b>	<b>Date responsible for obtaining a retail license and beginning collection of SC sales and use tax</b>	<b>Due date of first sales and use tax return (Assume a monthly tax filer)</b>
Calendar Year 2017	November 1, 2018	December 20, 2018 for the November 2018 return
From January 1, 2018 to September 30, 2018	November 1, 2018	December 20, 2018 for the November 2018 return
On or after October 1, 2018	First day of second calendar month after economic nexus is established (See below examples)	(See below examples)
October 2018	December 1, 2018	January 21, 2019 for the December 2018 return*
November 2018	January 1, 2019	February 20, 2019 for the January 2019 return
December 2018	February 1, 2019	March 20, 2019 for the February 2019 return
January 2019	March 1, 2019	April 22, 2019 for the March 2019 return*
July 2020	September 1, 2020	October 20, 2020 for the September 2020 return
August 2020	October 1, 2020	November 20, 2020 for the October 2020

\*Monthly sales and use tax returns are due by the 20<sup>th</sup> of the following month. Since the 20<sup>th</sup> of the month in these examples falls on a Saturday or a Sunday, the due date is extended to the next business day.

#### **4. EFFECTIVE DATE FOR OBTAINING A RETAIL LICENSE AND REMITTING THE SALES AND USE TAX - PHYSICAL NEXUS**

##### **When is physical nexus established?**

A retailer has physical nexus with South Carolina if it maintains within South Carolina, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within South Carolina under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business within South Carolina.

##### **What is the effective date for a retailer with physical nexus with South Carolina to obtain a retail license and begin collecting and remitting sales and use tax in South Carolina?**

A retailer with physical nexus with South Carolina must begin collecting and remitting the South Carolina sales and use tax for deliveries into South Carolina effective the date physical nexus is established.

##### **Is a remote seller who does not meet South Carolina's standard for economic nexus but subsequently establishes physical nexus with South Carolina required to collect and remit the sales and use tax?**

Yes. Once a retailer establishes physical nexus with South Carolina, the retailer must obtain a retail license and begin collecting and remitting the sales and use tax effective the date physical nexus is established.

#### **5. LOCAL TAX NEXUS, COLLECTION, AND REMITTANCE**

##### **Are local sales and use taxes administered by the Department remitted to the county or city imposing the tax or to the Department?**

All local sales and use taxes administered by the Department are remitted to the Department.

##### **Are remote sellers required to collect local sales and use taxes administered by the Department?**

Yes. Remote sellers licensed with South Carolina for sales and use tax purposes must collect and remit to the Department the applicable local sales and use taxes.

Note: Certain counties have local hospitality taxes, which must be reported and paid directly to counties; however, this situation is rare for remote sellers.

**How can a remote seller determine if local sales and use taxes administered and collected by the Department on behalf of local jurisdictions apply to a sale?**

For information on local taxes administered and collected by the Department, visit the Department's website ([dor.sc.gov](http://dor.sc.gov)).

**Does SC require a remote seller to register and file separate returns for local sales and use taxes?**

No. South Carolina state and local sales and use taxes are reported on one return.

**6. TAXABLE TRANSACTIONS**

**What sales are taxable in South Carolina?**

South Carolina imposes a sales and use tax on all sales of tangible personal property delivered into South Carolina, unless an exemption or exclusion applies.

In addition, the following services are specifically subject to the South Carolina sales and use tax:

- communications,
- laundry and related services,
- furnishing of accommodations, and
- electricity.

Note: See the FAQ section entitled “Exemptions and Exclusions” for examples of sales that are exempt or excluded from sales and use tax.

**What is the measure of the sales and use tax?**

The measure upon which the sales tax is based is “gross proceeds of sales” as defined in Code Section 12-36-90. The measure upon which the use tax is based is “sales price” as defined in Code Section 12-36-130.

Note: See Code Sections 12-36-90 and 12-36-130 for information as to what is included and what is not included in “gross proceeds of sales” and “sales price.”

### **What is an example of “gross proceeds of sales” or “sales price”?**

Generally, “gross proceeds of sales” and “sales price” are the total amount charged in conjunction with the sale or rental of tangible personal property.

Example: Assume a remote seller sells a computer for \$1,200 and ships it at no additional charge to a South Carolina customer. However, at the time of the purchase of the computer, the South Carolina customer exercises an option and purchases an extended warranty for \$200. The total amount charged in conjunction with the sale of the computer, or the “gross proceeds of sales” or “sales price” of the computer, is \$1,400.

### **Are remote sellers required to remit sales and use tax on sales made via the internet?**

Yes. Remote sellers who meet South Carolina’s economic nexus standard are required to remit sales and use tax on all taxable sales into South Carolina, including sales made by the remote seller through his website or catalog and telephone sales operations.

The Internet Tax Freedom Act prohibits South Carolina from imposing sales and use tax on internet access services, but does not prohibit South Carolina from taxing sales made via the internet.

## **7. EXEMPTIONS AND EXCLUSIONS**

### **Are certain sales exempt or excluded from the South Carolina sales and use tax?**

Yes. Sales of various items, and sales to certain entities, are specifically exempted or excluded from State and local sales and use taxes. For example, the following sales are exempt from State and local sales and use taxes:

- Sales to the federal government
- Sales of prescription medicine sold to an individual by prescription
- Sales of clothing, computers, and school supplies during the annual Sales Tax Holiday (the first Friday, Saturday, and Sunday in August)
- Sales of textbooks for use in a course of study at elementary schools, middle schools, high schools, and colleges

In addition, sales of unprepared food (*i.e.*, food that may be purchased with U.S. Department of Agriculture food stamps) are exempt from the State sales and use tax. Whether sales of such unprepared food are exempt from local sales and use tax depends on the type of local sales and use tax being imposed.

Note: For information on all the exemptions and exclusions, or to obtain more details as to the requirements of the above examples, visit the Department’s website ([dor.sc.gov](http://dor.sc.gov)).

## **8. STATE AND LOCAL TAX RATES**

### **What is South Carolina's current State sales and use tax rate?**

South Carolina imposes the following State tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%
Manufactured Home	5% + 2% for amounts over \$6,000 <sup>1</sup>
Maximum Tax Items	5% (Maximum Tax: \$500 or \$300)
Sales to Persons 85 and Older	5%

### **What are the current tax rates for local sales and use taxes administered and collected by the Department?**

Most local sales and use taxes administered and collected by the Department are currently imposed at a rate of 1%. Only the two local transportation sales and use taxes imposed in Charleston County are imposed at a rate other than 1% - with each being imposed at a rate of ½ of 1%.

Note: As of December 2019, 43 of the 46 counties in South Carolina impose one or more county-wide local sales and use taxes. The total local sales and use tax rate in a particular county or city depends on the number of local sales and use taxes imposed in that county or city and can range from 0% to 3% at this time. Only one city, Myrtle Beach, imposes a city-wide local sales and use tax.

## **9. RETAIL LICENSES AND FILING REQUIREMENTS**

### **What is the fee for a South Carolina retail license?**

The fee for a South Carolina retail license is \$50 for each retail location. The retail license is valid as long as the sales and use tax account is open.

### **Is the fee for the South Carolina retail license paid annually?**

No. The \$50 fee is a one-time fee.

Note: If the remote seller subsequently closes his South Carolina retail license, he must pay another \$50 to obtain a new retail license.

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<sup>1</sup> See South Carolina Code Section 12-36-2110 for information on maximum tax and exemption provisions that apply to certain energy efficient manufactured homes.

### **How do remote sellers obtain a retail license in South Carolina?**

A remote seller required to obtain a retail license must register directly with the Department. A remote seller may register with the Department online using the Department's tax portal, MyDORWAY, or by submitting a paper application. The Department's online portal for obtaining a retail license can be found at: [MyDORWAY.dor.sc.gov](http://MyDORWAY.dor.sc.gov).

The Department's paper application for use by remote sellers in obtaining a retail license is South Carolina Form DOR-111RS, "Remote Seller Sales and Use Tax Registration." This form is on the Department's website ([dor.sc.gov](http://dor.sc.gov)).

### **When are sales and use tax returns due?**

Sales and use tax returns are due by the 20th of the month following the end of the month in which the sales occurred. For example, for sales that occur in November, the November return must be filed by December 20th.

### **Can I file quarterly or annually instead of monthly?**

Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department. To determine if you are eligible to file quarterly or annually, please contact the Department's Licenses and Registration Section.

### **Do I need to file a return if I don't make any sales for a particular filing period (e.g., monthly, quarterly, annually)?**

Yes. A sales and use tax return is due for each filing period the sales and use tax account is open, including filing periods for which the remote seller will file a "zero tax due" return.

### **Do I need to file a return if all my sales are exempt sales for a particular filing period (e.g., monthly, quarterly, annually)?**

Yes. A sales and use tax return is due for each filing period the sales and use tax account is open, including filing periods for which the remote seller will file a "zero tax due" return.

In the case of a return in which all sales are exempt sales, the remote seller must still report its "gross proceeds of sales" and take a deduction for all exempt sales which will result in a "zero tax due" return.



**Does the remote seller receive a discount for timely filing and remitting State and local sales and use tax?**

Yes. If returns are filed and the taxes are paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, the discount is 2% of the tax.

The maximum discount allowed per taxpayer (all locations included) during the state's fiscal year (July 1 - June 30) is \$3,000. The discount is increased to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.

Remote sellers not required by law to collect the South Carolina sales and use tax (*i.e.*, do not have physical nexus or economic nexus), but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

The discount (whether \$3,000, \$3,100, or \$10,000) is calculated from the June return filed in July to the May return filed in June.

## **10. SOUTH CAROLINA PURCHASERS**

**What is the effect of the *Wayfair* decision on South Carolina purchasers?**

Purchasers in South Carolina may see an increased number of remote sellers charging South Carolina sales and use tax. As before *Wayfair*, if a remote seller does not charge sales or use tax on a taxable item delivered in South Carolina, the purchaser should pay use tax on the purchase price. For example, an individual may report the use tax on his South Carolina individual income tax return or by filing a Form UT-3.

For additional information, see SC Revenue Ruling #18-9, "Use Tax Information for Businesses, Individuals, and Nonprofits."

## Chapter 14

# Manufacturers, Processors, and Compounders

### A. General Information

Manufacturers, processors, and compounders are eligible for numerous exclusions and exemptions from sales and use tax.<sup>1</sup> This chapter provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale;<sup>2</sup> ingredient parts;<sup>3</sup> electricity;<sup>4</sup> fuel;<sup>5</sup> packaging;<sup>6</sup> and sales for resale.<sup>7</sup>

### B. Machines, Parts, and Attachments

General Information. The “machine exemption”<sup>8</sup> exempts from sales and use tax purchases of machines used in manufacturing, processing, agricultural packaging, compounding, mining, or quarrying tangible personal property for sale. The term “machines” includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

The applicability of this machine exemption depends on whether the machine is integral and necessary to the manufacturing process<sup>9</sup> - i.e., is the machine an essential and indispensable component part of the manufacturing process and is it used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules*

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<sup>1</sup> South Carolina Code §§12-36-2120 and 12-36-120 and SC Regulation 117-302.

<sup>2</sup> South Carolina Code §12-36-2120(17).

<sup>3</sup> South Carolina Code §12-36-120(2).

<sup>4</sup> South Carolina Code §12-36-2120(19).

<sup>5</sup> South Carolina Code §12-36-2120(9).

<sup>6</sup> South Carolina Code §§12-36-2120(14) and 12-36-120(4).

<sup>7</sup> South Carolina Code §12-36-120(1).

<sup>8</sup> South Carolina Code §12-36-2120(17).

<sup>9</sup> References to “manufacturing” include “processing,” “compounding,” “mining,” and “quarrying.”

*Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for determining if a machine is integral and necessary to the manufacturing process; two South Carolina court decisions in 2003 have followed and clarified this theory. Each is briefly discussed below.

*Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984). *Hercules* involved whether a facility that treated waste on plant property that was produced in connection with the manufacture of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

The following test was used by the Court in determining what is an exempt “machine.” Are improvements, either fastened or loose,

1. Used directly in manufacturing the products that the establishment intended to produce;
2. Necessary and integral part of the manufacturing process;
3. Used for the purpose of manufacturing the product it was intended to produce; and
4. Not benefiting the land generally, and will not serve various users of the land.

The Court further defined the term “machine” to include “the concept of combination” (*i.e.*, combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process” and that the statute makes no distinction “as to whether a machine is a fixture or personal property.”

*Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals*, No. 2003-UP-029, (1/8/03) (unpublished), cert. denied, (10/8/03). *Springs* involved the applicability of the machine exemption to “machines used in manufacturing” at a textile plant, and to chemicals used at the plant’s wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used in an ongoing and continuous basis during the manufacturing process.

*Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as paint and sealants, foundations, structural steel, steel decking and checkers plates for buildings, hangers and supports for process piping, and architectural roofing and siding, purchased to construct a manufacturing facility were not exempt as a machine.

The machine exemption does not apply to everything that can be useful to a manufacturer. The applicability of the machine exemption depends on whether the machine is integral and necessary to the manufacturing process.

### **C. Machine Exemption – General Rule**

A machine qualifies for the machine exemption if the machine meets the following three requirements:<sup>10</sup>

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be exempt; however, similar machines used by a local retail bakery are not exempt.
2. The machine is used in, and serves as an essential and indispensable component part of the manufacturing process, and is used on an ongoing and continuous basis during the manufacturing process. Note: A machine “integral and necessary” to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not exempt under the machine exemption since it is not “integral and necessary” to the manufacturing process.
3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale, *i.e.*, more than one-third of a machine’s use is for manufacturing.

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.<sup>11</sup>

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<sup>10</sup> SC Regulation 117-302.5.

<sup>11</sup> SC Regulation 117-302.5.

## **D. Machines - Replacement Parts and Attachments**

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption if they are

- (1) used on or in the operation of exempt machines,
- (2) manufactured for use on or in the operation of exempt machines,
- (3) integral and necessary to the operation of exempt machines, and
- (4) customarily so used.

In order to be exempt, a part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by the manufacturer, except the usual and customary minor adjustment. It must be a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine.<sup>12</sup>

## **E. Examples of Exempt Machines or Machine Parts**

Examples of exempt machines or parts of machines include the following:

- material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another;
- chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process;
- tanks which are a part of the chain of processing operations (the exemption does not include storage tanks);
- transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery;

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<sup>12</sup> See SC Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

- machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials;
- recording instruments attached to manufacturing machines;
- belting purchased for use on a particular machine used in manufacturing tangible personal property for sale; and
- materials used by manufacturers or contractors in building machines that will manufacture tangible personal property for sale.

## **F. Examples of Non-Exempt Machines or Parts**

Examples of taxable machines or parts include the following:

- material handling machinery and/or mechanical conveyors up to the point where the materials go into process;
- chemicals used to clean non-exempt machines, such as storage tanks, or the manufacturing facility;
- paint used on exempt manufacturing machines to prevent machine corrosion;
- greases, oils (*e.g.*, motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process;
- machines used for maintenance purposes (*i.e.*, machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks;
- storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water;
- warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products;
- storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant;

- power lines bringing electricity into the plant; and
- administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees.

## **G. Machines – A Structure versus a Building**

The machine exemption can apply to a machine that is a “structure.” However, a structure that is a building is not a “machine,” and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing.<sup>13</sup>

The Department held that (1) a settling basin for a wastewater treatment facility was one part of a single entity and that the facility was a “machine”<sup>14</sup> and (2) a gamma irradiator constitutes a machine.<sup>15</sup>

See Section S of this chapter for information on an exemption for the sale of construction material used in constructing a manufacturing facility meeting certain investment and job requirements.

## **H. Pollution Abatement Machines<sup>16</sup>**

Pollution control machines qualify for the machine exemption when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property for sale.<sup>17</sup>

South Carolina Commission Decision #92-19 illustrates the application of the machine exemption to pollution abatement machines. In this decision, the Department held that stack liners and ash pond pipes and pumps located at a taxpayer’s electrical generating facility were exempt from sales and use tax as pollution abatement machines on the grounds that these items were “operated exclusively in the abatement of pollution caused by the production of electricity.”<sup>18</sup>

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<sup>13</sup> See SC Regulation 117-302.5 and South Carolina Revenue Ruling #04-7 for more details.

<sup>14</sup> South Carolina Revenue Ruling #89-7.

<sup>15</sup> South Carolina Private Letter Ruling #90-3.

<sup>16</sup> South Carolina Code §12-36-2120(17) and SC Regulation 117-302.6

<sup>17</sup> South Carolina Code §12-36-2120(17).

<sup>18</sup> South Carolina Commission Decision #92-19.

## **I. Machines Owned by Someone Other Than a Manufacturer**

Ownership of the machine by the manufacturer is not required to qualify for the machine exemption. The use of a machine determines whether it is exempt from sales and use tax.<sup>19</sup>

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the manufacture of tangible personal property for sale. The Court determined that the machine exemption applied to the materials used to construct that facility, without regard to the machine's ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation.<sup>20</sup>

## **J. Machines Used Substantially in Manufacturing (Dual Usage Machines)**

“Substantial” use, but not “exclusive” use, of a machine in the manufacture of tangible personal property for sale is required in order for the machine exemption to apply. Several examples illustrating this principle are provided below.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with a regulation approved by the General Assembly, more than one-third of a machine's use in manufacturing is substantial.<sup>21</sup>

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<sup>19</sup> South Carolina Code §12-36-2120(17).

<sup>20</sup> See also *Southeastern-Kusan v. South Carolina Tax Commission*, 280 S.E. 2d 57 (1981).

<sup>21</sup> SC Regulation 117-302.5. See also *Anonymous Corporation v. South Carolina Department of Revenue* (06-CP-40-0103), Court of Common Pleas for the Fifth Judicial Circuit (2008).



## **K. Tangible Personal Property that is an “Ingredient or Component Part” or “Used Directly” in the Process**

South Carolina does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.<sup>22</sup>

Further, South Carolina does not tax the sale of tangible personal property “used directly” in manufacturing, compounding, or processing tangible personal property for sale.<sup>23</sup> An item is “used directly” if the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting or processing takes place.<sup>24</sup>

Examples of these exclusions from the tax are:<sup>25</sup>

- (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale, or
- (2) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

## **L. Electricity**

The sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale is exempt from the tax.<sup>26</sup>

This exemption applies to electricity that provides lighting necessary for the operation of machines used in manufacturing tangible personal property for sale and to electricity used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.<sup>27</sup>

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<sup>22</sup> South Carolina Code §12-36-120(2).

<sup>23</sup> South Carolina Code §12-36-120(3).

<sup>24</sup> SC Regulation 117-302.1.

<sup>25</sup> SC Regulation 117-302.1.

<sup>26</sup> South Carolina Code §12-36-2120(19).

<sup>27</sup> SC Regulation 117-302.4.

This exemption does not apply to sales of electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters, and waste house lights.<sup>28</sup>

## **M. Coal, Coke, and Other Fuel**

The sale of coal, coke, or other fuel to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generation of electric power or energy for use in manufacturing tangible personal property for sale is exempt from the tax.<sup>29</sup> For purposes of this exemption, mining and quarrying are considered to be manufacturing.

The sale of coal, coke or other fuel to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale is also exempt.<sup>30</sup>

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

## **N. Fuel Used by Aircraft Manufacturer**

Sales of fuel that will be used for test flights of aircraft by the manufacturer of the aircraft, or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, are exempt from the tax if certain requirements are met.<sup>31</sup> The exemption does not apply to fuel used for the transportation of major component parts for construction or assembly or fuel used for the transportation of personnel.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

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<sup>28</sup> SC Regulation 117-302.4.

<sup>29</sup> South Carolina Code §12-36-2120(9).

<sup>30</sup> SC Regulation 117-302.3.

<sup>31</sup> South Carolina Code §12-36-2120(9)(e) and (f).

**This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.<sup>32</sup>**

## **O. Packaging**

The sale of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property are not subject to the tax.<sup>33</sup> The terms “materials,” “containers,” and “cores” are defined as follows:<sup>34</sup>

“Materials” include wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives.

## **P. Sales for Resale or Wholesale Sales**

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (*e.g.*, a wholesale sale).<sup>35</sup> Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina and bills the retailer for the product. See South Carolina Revenue Ruling #98-8 for further information on drop shipments.

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<sup>32</sup> Act No. 124 of 2009, Section 2B. See also SC Information Letter #15-18.

<sup>33</sup> South Carolina Code §§12-36-120(4) and 12-36-2120(14).

<sup>34</sup> SC Regulation 117-302.2.

<sup>35</sup> South Carolina Code §12-36-120(1).

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability. Sales to users or consumers are taxable. It is not required that Form ST-8A be used. A letter from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the “Uniform Sales and Use Tax Certificate” published by the Multistate Tax Commission (“MTC”) may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser’s retail business.<sup>36</sup>

## **Q. Material Handling Systems and Equipment<sup>37</sup>**

Sales of material handling systems and equipment for use in the operation of a manufacturing facility<sup>38</sup> are exempt from the tax if certain requirements are met. This exemption includes, but is not limited to, racks used in the operation of a manufacturing facility, whether or not used to support all or part of the facility structure.

The following are examples of material handling systems and material handling equipment that qualify for the exemption when used in the operation of a manufacturing facility or a distribution facility that meets the requirements of the exemption:

- Automated storage and retrieval systems
- Carts
- Conveyors
- Cranes
- Dollies/Forklifts (including battery chargers designed for the forklift)<sup>39</sup>
- Hand Trucks
- Hoppers
- Piping
- Pumps

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<sup>36</sup> See South Carolina Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

<sup>37</sup> See South Carolina Code § 12-36-2120(51) and SC Revenue Ruling #13-3 for a detailed analysis of what qualifies for the material handling exemption.

<sup>38</sup> This exemption also applies to distribution facilities complying with the notice requirements and meeting the investment requirements of the exemption. A port facility as defined in Code Section 12-6-3375 is considered a distribution facility for purposes of South Carolina sales and use tax exemptions. See Code Section 12-36-2140. The State Ports Authority and the Navy Base Intermodal Facility are also considered to be distribution facilities for the purpose of sales and use tax exemptions associated with the purchase of equipment and construction materials for State Fiscal Year 2020-2021. See Temporary Provisos 117.127 and 50.20 (Act No. 135 of 2020, Part IB), respectively.

<sup>39</sup> The battery charger qualifies for the exemption since the forklift, and the battery charger designed for it, are two parts of a material handling system. See South Carolina Revenue Ruling #13-3.

Racks  
Shelving  
Stackers  
Tanks

The exemption does not apply to any material handling systems or material handling equipment that is not used in the operation of a manufacturing facility or a distribution facility (e.g., mail carts, shelving used in the office for books and records, office computers, copiers, and similar office equipment) and does not apply to any material handling systems or material handling equipment used in a manufacturing facility or distribution facility that does not meet all the requirements of the exemption.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a five-year period, invest at least thirty-five million dollars in real or personal property in South Carolina.

## **R. Computer Equipment**

Sales of computer equipment that will be used in connection with a manufacturing facility are exempt from the tax if certain requirements are met.<sup>40</sup>

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

“Computer equipment” means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.<sup>41</sup>

**This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to**

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<sup>40</sup> South Carolina Code §12-36-2120(65)(b). An exemption for computer equipment also applies to technology intensive facilities, as defined in South Carolina Code §12-6-3360(M)(14)(b), complying with the notice requirements and investment requirements set forth in South Carolina Code §12-36-2120(65)(a).

<sup>41</sup> South Carolina Code §12-36-2120(65)(c).

**qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**<sup>42</sup>

## **S. Construction Material**

Sales of construction materials used in the construction of a new or expanded single manufacturing facility are exempt from the tax if certain requirements are met.<sup>43</sup>

The taxpayer must meet one of two sets of investment and job requirements:

- (1) The taxpayer must make a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period.<sup>44</sup>
- (2) The taxpayer must make a capital investment of at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven year period and must create at least three thousand eight hundred full-time new jobs at the facility during that seven year period. **This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**<sup>45</sup>

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption.

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<sup>42</sup> Act No. 124 of 2009, Section 3B. See also SC Information Letter #15-18.

<sup>43</sup> South Carolina Code §12-36-2120(67).

<sup>44</sup> This exemption, requiring a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period, also applies to distribution facilities or combined manufacturing and distribution facilities. A port facility as defined in Code Section 12-6-3375 is considered a distribution facility for purposes of South Carolina sales and use tax exemptions. See Code Section 12-36-2140. The State Ports Authority and the Navy Base Intermodal Facility are also considered to be distribution facilities for the purpose of sales and use tax exemptions associated with the purchase of equipment and construction materials for State Fiscal Year 2020-2021. See Temporary Provisos 117.127 and 50.20 (Act No. 135 of 2020, Part IB), respectively.

<sup>45</sup> Act No. 124 of 2009, Section 4B. See also SC Information Letter #15-18.

## Chapter 15

### Agriculture

#### A. General Information

The agriculture industry enjoys numerous exclusions and exemptions from sales and use tax. This chapter will provide a more detailed discussion of the common exclusions and exemptions available to persons in the agriculture industry.

#### B. Machines, Parts and Attachments<sup>1</sup>

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;

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<sup>1</sup> SC Regulation 117-301.5.

- farm wagons substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does **not** apply to:

- automobiles and trucks;
- farm wagons not substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale;<sup>2</sup>
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

## C. Livestock<sup>3</sup>

The sale of livestock is exempt from the tax.<sup>4</sup> Livestock is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.

The practical result of the above is to exempt from the tax horses, mules, cattle, swine, sheep, goats, rabbits, ostriches and any other animals raised as food for human consumption, domesticated fish produced for human consumption, and chinchillas.

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<sup>2</sup> For example, the sale or purchase of a farm wagon for use solely in (a) hauling tractors, harvesting equipment, or cattle; or (b) hauling farm crops (i.e., hay, corn, peaches) from a storage area to market or to a buyer is **not** exempt from the sales and use tax. If a farm wagon is used for both exempt and nonexempt purposes, then the sale or purchase of the farm wagon is exempt from the sales and use tax only if it is used substantially (not merely incidentally) in the planting, cultivating, or harvesting of farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale.

<sup>3</sup> SC Regulation 117-301.1

<sup>4</sup> South Carolina Code §12-36-2120(4).



Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), minnows, worms, fish (except those cultivated for human consumption), and animals of a wild nature are not considered livestock.

## **D. Feed<sup>5</sup>**

The sale of feed used in the production and maintenance of livestock<sup>6</sup> is exempt from the tax. Horse feed,<sup>7</sup> rabbit feed used in the production and maintenance of rabbits for human consumption, and feed used in the production and maintenance of fry, fingerlings and fish are exempt.

## **E. Insecticides, Chemicals, Fertilizers, Soil Conditioners, Seeds and Seedlings<sup>8</sup>**

Insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of farm, grove, vineyard or garden products are exempt from the tax.<sup>9</sup> This exemption includes:

- explosives (chemicals) used solely in the production for sale of farm, grove, vineyard or garden products;
- medicines (chemicals) used solely in the production for sale of livestock;
- insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of timber and timber products, nursery products, and poultry and poultry products;
- insecticides and chemicals, including washing powder, soap, etc., used by dairy operators at the dairy barn in the production for sale of products of the dairy; and
- bull semen used solely in the production for sale of livestock.

This exemption does not apply to liquid petroleum gas used for burning grass and weeds around farm crops.

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<sup>5</sup> SC Regulation 117-301.2

<sup>6</sup> South Carolina Code §12-36-2120(5). For definition of livestock, see SC Regulation 117-301.1.

<sup>7</sup> South Carolina Private Letter Ruling #99-1.

<sup>8</sup> SC Regulation 117-301.3.

<sup>9</sup> South Carolina Code §12-36-2120(6). See also SC Revenue Ruling #16-8.

## **F. Containers and Labels<sup>10</sup>**

Containers and labels used in preparing agriculture products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt from the tax.<sup>11</sup> For the purposes of this exemption, “containers” means boxes, crates, bags, bagging, ties, barrels, and other containers.

This exemption applies to bags sold to:

- wholesale grain and feed dealers for use as furnished containers of corn and oats;
- cotton dealers or ginnermen for use as furnished containers of cotton seed;
- produce dealers for use as furnished containers of potatoes, cabbage, etc.;
- peanut hullers for use as furnished containers of peanut kernels, hulls, and vines; and
- nurserymen for use as furnished containers of nursery stock.

Wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property are exempt.<sup>12</sup>

The above exemptions do not apply to tobacco twine used by farmers incident to the curing of tobacco.

## **G. Fuel<sup>13</sup>**

Fuel used in farm machinery and farm tractors used in planting, cultivating or harvesting farm crops and fuel used to cure agricultural products are exempt from the tax.<sup>14</sup> This applies to fuel used in curing grain in grain elevators for storage or sale.

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<sup>10</sup> SC Regulation 117-301.4.

<sup>11</sup> South Carolina Code §12-36-2120(7).

<sup>12</sup> South Carolina Code §12-36-2120(14).

<sup>13</sup> SC Regulation 117-301.6.

<sup>14</sup> South Carolina Code §12-36-2120, subsections (15) and (18).

## H. Electricity and Gas<sup>15</sup>

Sales of electricity and gas to farmers for use in the production of livestock and milk are exempt from the tax. Sales of electricity for residential purposes and irrigating crops are also exempt. Sales of electricity for other uses are taxable.

The following sales of electricity and gas are exempt:

- sales of electricity and natural and liquefied petroleum gas to farmers for use in the production of livestock or milk;<sup>16</sup>
- sales of electricity for irrigating farms crops;<sup>17</sup> and
- sales of electricity and gas for residential purposes.<sup>18</sup>

Sale of electricity and gas to farmers for other uses are taxable.

## I. Building Materials, Supplies, Fixtures and Equipment for Commercial Housing of Poultry and Livestock<sup>19</sup>

Sales of building materials, supplies, fixtures, and equipment used in the construction, repair, or improvement of a commercial housing of poultry or livestock, or that become a part of a self-contained enclosure or structure specifically designed, constructed and used for the commercial housing of poultry or livestock, are exempt from the tax.<sup>20</sup>

This exemption applies to:

- wood chips for use on the floors of self-contained enclosures or structures specifically designed, constructed, and used for the commercial housing of poultry;<sup>21</sup>
- fencing and fencing supplies when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field

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<sup>15</sup> SC Regulation 117-301.7.

<sup>16</sup> South Carolina Code §12-36-2120(32).

<sup>17</sup> South Carolina Code §12-36-2120(44).

<sup>18</sup> South Carolina Code §12-36-2120(33); SC Revenue Ruling #19-5.

<sup>19</sup> SC Regulation 117-301.8.

<sup>20</sup> South Carolina Code §12-36-2120(45).

<sup>21</sup> South Carolina Information Letter #95-1.

that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes;<sup>22</sup> and

- watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry, provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes.<sup>23</sup>

The exemption does not apply to fencing and fencing supplies used to surround a field where crops are grown.

## **J. Sales by Farmers<sup>24</sup>**

Sales of farm products are exempt if sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption not only applies to sales of farm products by individuals; it also applies to sales by corporations and other entities. The exemption applies to food products, ornamental plants, timber, and grass sod.

The exemption is not applicable if the farmer processes his product beyond the usual and customary preparation for sale. For example, where a farmer also operates a processing plant, he cannot claim the exemption for sales of these processed products.

## **K. Hatcheries<sup>25</sup>**

The hatchery operator may purchase under his retail license hatchery eggs for use in hatching baby chicks for sale. Hatchery eggs may be sold free of the tax to a hatchery operator not having a retail license, provided, the seller thereof takes from such operator a certificate that the property is for resale either in the original form or as baby chicks or as full grown chickens. Hatcheries engaged in the business of hatching baby chicks for others from eggs grown by those other persons (custom hatching) are rendering a service which is not subject to the tax.

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<sup>22</sup> South Carolina Revenue Ruling #95-11.

<sup>23</sup> South Carolina Revenue Ruling #95-11.

<sup>24</sup> SC Regulation 117-301.9.

<sup>25</sup> SC Regulation 117-301.10.

## Chapter 16

# Construction Contractors

### A. General Information

A construction contractor is the user or consumer of everything he buys. A “construction contractor” is a person or business making repairs, alterations, or additions to real property.<sup>1</sup>

In general, all purchases by construction contractors, including building materials,<sup>2</sup> are retail purchases and are subject to South Carolina sales or use tax. A contractor who buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina is liable for South Carolina use tax.<sup>3</sup> A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state.<sup>4</sup>

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

- (1) The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina.<sup>5</sup>
- (2) The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina.<sup>6</sup>

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<sup>1</sup> SC Regulation 117-314.2.

<sup>2</sup> SC Regulation 117-314.2 defines “building materials” to mean any material used in making repairs, alterations or additions to real property, including “such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.”

<sup>3</sup> South Carolina Code §12-36-1310(A) and South Carolina Revenue Ruling #89-16.

<sup>4</sup> South Carolina Code §12-36-1310(C).

<sup>5</sup> South Carolina Code §12-36-2120(36).

<sup>6</sup> South Carolina Code §12-36-110(2).

## **B. Retailer vs. Contractor**

### Statutes and Regulations

In making the determination as to whether a person is a retailer making sales and installations or a contractor, the following provisions must be considered:

South Carolina Code §12-36-910(A) imposes the sales tax and reads:

A sales tax, equal to [six] percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

South Carolina Code §12-36-1310(A) imposes the use tax and reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

South Carolina Code §12-36-1340 concerns the collection of the use tax by the retailer, and states:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State;
- (5) operates as a marketplace facilitator; or

- (6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.<sup>7</sup>

South Carolina Code §12-36-70 defines the term “retailer” and provides that a “retailer” includes every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
  - (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;
  - (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
  - (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
  - (e) selling electric power or energy;
  - (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;
- (2)(a) maintaining a place of business or qualifying to do business in this State;  
or
- (b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State;
- (3) operating as a marketplace facilitator, as defined in Section 12-36-71.<sup>8</sup>

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<sup>7</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

<sup>8</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

South Carolina Code §12-36-110 defines the term “retail sale” to mean in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

South Carolina Code §12-36-120 defines the term “wholesale sale,” in part, to mean:

a sale of . . . tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

However, South Carolina Code §12-36-110(1) further defines the term “retail sale” to include, in part:

- (a) sales of building materials<sup>9</sup> to construction contractors, builders, or landowners for resale or use in the form of real estate;

\* \* \*

- (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

- (e) sales to contractors for use in the performance of construction contracts;

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<sup>9</sup> SC Regulation 117-314.2 states:

“Building materials” when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. “Building materials” as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. “Builders,” “contractors,” and “landowners” mean and include any person, firm, association or corporation making repairs, or additions to real property. The term “building materials” includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.



Finally, SC Regulation 117-324, entitled “Dual Business,” states:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.  
(Emphasis added.)

The provisions above establish two types of businesses that may deal with the incorporation of tangible personal property into real property – retailers and contractors.

In other words, any person who sells tangible personal property at retail, or who sets himself up as being engaged in selling tangible personal property at retail, is a retailer. A person who makes improvement to real property but who is not engaged in selling tangible personal property at retail is a contractor.

#### Sales and Use Tax Implications for Retailers and Contractors

Based on the above statutes and regulations, if a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased. The sales by a contractor that are isolated or accommodation sales are not subject to the sales and use tax.

If a person is deemed a retailer, then the purchases of materials for resale are not subject to the tax, but the subsequent sales at retail of such materials are subject to the tax based on the “gross proceeds of sales” or “sales price.”<sup>10</sup> However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

#### Retailer vs. Contractor Determination

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances.

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<sup>10</sup> See *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe’s Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).

Factors used in determining whether a person is a retailer making sales and installations or a contractor include, but are not limited to: how the person advertises his business (as a retailer or contractor); are retail sales made in which installation is not performed by the seller or on behalf of the seller; does the person have a showroom to display his products and how would this showroom be perceived by the general public; is the person licensed as a contractor under state law; does the person perform labor for a general contractor as a “subcontractor;” etc.

In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

#### Retailer-Contractor Making Sales and Installations

Where a person acts as both a retailer and a contractor, the following factors have been examined in determining that the taxpayer is acting as a retailer making sales and installations for particular transactions:

- (1) whether the person provides installation services to customers who have already purchased materials from somewhere else;
- (2) whether the customer purchases materials to be installed in a traditional retail transaction (i.e., the materials are selected from the tangible personal property sold by the person; the customer pays for the materials at the cash register and pays the retail sales price for the materials; and the cost of the materials is listed individually and separately from labor on the invoice);
- (3) whether the customer would perceive the transaction any different than a purchase of the identical materials in a traditional transaction; and
- (4) whether the person used a resale certificate to purchase the materials.

*See Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe’s Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).

#### Retailer-Contractor Acting as Contractor

Finally, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (e.g., bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a

construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer's purchases are deemed to be wholesale purchases, and the retailer's transactions with its customers will be treated as retail sales.<sup>11</sup>

## C. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free.<sup>12</sup> Often, a construction contractor will have a contract with a manufacturer, processor or compounder that has an exemption certificate and is entitled to the exemption for machines, parts and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts and attachments for manufacturers that are exempt from tax. These methods are:

Manufacturer Letter to Contractor's Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor's suppliers establishing that the item is not subject to the tax. The manufacturer agrees to reimburse the party liable for the tax if a transaction is later determined to be subject to the tax. The contractor does not use the manufacturer's exemption certificate.

Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer, and the contractor is allowed to use the manufacturer's exemption certificate. As an agent, the contractor is legally acting for the principal. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

Department Special Agreement – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a "Special 19 Agreement."

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<sup>11</sup> See Chapter 6 ("Gross Proceeds of Sales" and "Sales Price"), Section E for a discussion of "withdrawals for use." See also SC Regulation 117-309.17. See also *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe's Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20), both holding the transactions in question to be retail sales and installations, rather than withdrawals for use. (Note: As discussed in Chapter 6, Section E, a withdrawal for use of tangible personal property purchased at wholesale constitutes a retail sale.)

<sup>12</sup> See SC Regulation 117-302.5.

Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under the “machine exemption.”<sup>13</sup> A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

## **D. Light Construction Equipment**

The law provides a maximum tax of \$500 on purchases of light construction equipment used for construction purposes, *i.e.*, building or making additions to real property.<sup>14</sup> The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to \$500. The local option sales and use taxes collected by the Department do not apply to sales subject to the \$500 maximum tax.

If light construction equipment is leased, it is subject to the \$500 maximum tax if the lease is in writing and has a stated term of, and remains in force for, a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$500 is paid.

The Department has concluded that the \$500 maximum tax does not apply to equipment used to maintain or repair property, such as tractors, loaders and other self-propelled equipment used to maintain golf courses, parks and campgrounds.<sup>15</sup>

## **E. Construction Material Used to Construct a Single Manufacturing or Distribution Facility**

South Carolina exempts from sales and use tax construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least \$100 million in real and personal property at a single site in the State over an 18 month period.<sup>16</sup>

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<sup>13</sup> South Carolina Code §12-36-2120(17).

<sup>14</sup> South Carolina Code §12-36-2110(A)(1)(g).

<sup>15</sup> South Carolina Technical Advice Memorandum #89-13.

<sup>16</sup> South Carolina Code §12-36-2120(67). A port facility as defined in Code Section 12-6-3375 is considered a distribution facility for purposes of South Carolina sales and use tax exemptions. See Code Section 12-36-2140. The State Ports Authority and the Navy Base Intermodal Facility are also considered to be distribution facilities for the purpose of sales and use tax exemptions associated with the purchase of equipment and construction materials for State Fiscal Year 2020-2021. See Temporary Provisos 117.127 and 50.20 (Act No. 135 of 2020, Part IB), respectively.

South Carolina also exempts from sales and use tax construction materials used in the construction of a new or expanded single manufacturing facility where the taxpayer (1) invests at least \$750 million in real or personal property or both comprising or located at the facility over a seven year period and (2) creates at least 3,800 new, full-time jobs at the facility during that seven year period. **This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**<sup>17</sup>

The taxpayer, with respect to either exemption for construction material, must notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the investment requirement or, after the expiration of the applicable investment period (18 months or seven years), that it has not met the investment requirement. This notification must also include the beginning date of the investment period.

## F. Contracts with the Federal Government<sup>18</sup>

South Carolina exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- becomes part of real or personal property owned by the federal government; or
- transfers to the federal government, pursuant to a written contract.<sup>19</sup>

The exemption does not apply to purchases of items that do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county and municipal governments are not exempt from sales and use tax.

Further, South Carolina Revenue Ruling #04-9 provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency

<sup>17</sup> Act No. 124 of 2009, Section 4B. See also SC Information Letter #15-18.

<sup>18</sup> SC Regulation 117-314.11 and South Carolina Revenue Ruling #04-9.

<sup>19</sup> South Carolina Code §12-36-2120(29).

agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement.<sup>20</sup>

## **G. Contracts with State, County and Municipal Governments**

Sales to, or purchases by, contractors under contracts with state, county and municipal governments generally are **not** exempt from the sales and use taxes.

## **H. Contractors that Manufacture or Fabricate Items that they will Use in Constructing Real Property<sup>21</sup>**

The state sales and use tax applies to businesses that manufacture or fabricate items, that they will use in constructing real property, as follows:

### Standard Finished Products:

If the taxpayer produces “standard finished products” that it sells at wholesale or at retail on a regular and continuous basis; creates “a new and substantially different article having a distinctive name and substantially different character or use” than that of the raw materials from which it was made; and, is commonly thought of as a manufacturer, then the taxpayer is a “manufacturer” of “building materials.” As a manufacturer, if the taxpayer uses such building materials in the performance of a construction contract, then the taxpayer is a “manufacturer/contractor,” and is liable for the sales tax based on the fair market value of the building materials at the time and place where used or consumed - the job site. However, if the job site is located outside of South Carolina, then no tax is due.

In addition, as a “manufacturer/contractor,” the taxpayer is entitled, to the extent applicable, to the exemptions and exclusions provided in South Carolina Code §12-36-2120(9),<sup>22</sup> 12-36-2120(17),<sup>23</sup> 12-36-2120(19)<sup>24</sup> and 12-36-120.<sup>25</sup> Also, the credit provisions of South Carolina Code §12-36-1310(C)<sup>26</sup> may be applicable.

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<sup>20</sup> See South Carolina Revenue Ruling #04-9 for the conditions that must be met for a subcontractor to be an agent for a general contractor.

<sup>21</sup> South Carolina Revenue Ruling #94-2. See also *Metromont Materials Corp. v. South Carolina Tax Commission*, Spartanburg County Court of Common Pleas, No. 84-CP-42-14 (1985).

<sup>22</sup> This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

<sup>23</sup> This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

<sup>24</sup> This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

“Standard finished products” are items that are not specifically designed for use on a particular construction project. Such items are standard or interchangeable and have a resale value and a fair market value. These items are generally mass-produced and are suitable for use on many construction projects.

#### Unique Products:

If the taxpayer produces “unique products” that it uses in the performance of a construction contract, then the taxpayer is a contractor. As such, sales to, and purchases by, the taxpayer of the raw materials used to fabricate (within South Carolina) the unique product are subject to the sales and use tax. However, if the fabricated item will be used, and become a part of realty, at a job site located outside of South Carolina, then the sales to, and purchases by, the taxpayer of the raw materials used in the fabrication of that unique product are not subject to the sales and use tax.

If the unique product is fabricated out-of-state, sales to or purchases by, the contractor of the materials used to fabricate the unique product are not subject to the sales and use tax, provided the materials were not sold and delivered to the contractor within South Carolina.

In addition, as a contractor, the taxpayer is not entitled to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),<sup>27</sup> 12-36-2120(17),<sup>28</sup> 12-36-2120(19)<sup>29</sup> and 12-36-120,<sup>30</sup> unless a substantial portion of its

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<sup>25</sup> This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

<sup>26</sup> This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

<sup>27</sup> This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

<sup>28</sup> This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

<sup>29</sup> This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

<sup>30</sup> This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.



business also includes the fabrication of “unique products” (and/or standard finished products) that it sells to contractors and other consumers. However, the credit provisions of South Carolina Code §12-36-1310(C)<sup>31</sup> may be applicable.

“Unique products” are items that are specifically designed for use on a particular construction project. Such items are not standard or interchangeable in any sense and have no resale value and no reasonable fair market value.

Note: Sales of “standard finished products” or “unique products” to contractors and other consumers who use them in the performance of a construction contract, or to otherwise make improvements to realty, are subject to the sales and use tax based upon gross proceeds of sales or sales price, unless otherwise excluded or exempted from the tax.

## **I. Transient Construction Property<sup>32</sup>**

When a contractor is hired to build an office complex somewhere in South Carolina, the contractor may purchase various machinery, tools and equipment from out-of-state vendors for use at the South Carolina job site. These purchases are subject to the South Carolina sales tax or the use tax.

In addition, the contractor may import or bring into this State other machinery, tools and equipment, owned by the contractor and previously and substantially used on other jobs outside of South Carolina. Such machinery, tools and equipment are known as “transient construction property.”<sup>33</sup>

“Transient construction property” is subject to a special imposition of the South Carolina use tax. This special imposition prorates the use tax to reflect the equipment’s duration of use in South Carolina. However, if the state in which the property was previously used does not prorate its use tax on, or depreciate the value for use tax purposes of, transient construction property used by South Carolina contractors operating in that state, the use tax, at six percent of the sales price, applies.<sup>34</sup>

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<sup>31</sup> This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

<sup>32</sup> South Carolina Code §12-36-1320 and South Carolina Revenue Ruling #89-11. Note: South Carolina Revenue Ruling #89-11 references the sales and use tax code sections prior to recodification in 1990; however, the taxation of transient construction property remained the same in South Carolina Code §12-36-1320 after recodification.

<sup>33</sup> South Carolina Code §12-36-150 defines “transient construction property” to mean “motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it.”

<sup>34</sup> South Carolina Code §12-36-1320.



In summary, the use tax imposed on the use of transient construction property is computed as follows:

Step #1: Multiply the Original Purchase Price by the State Tax Rate.<sup>35</sup>

Step #2: Divide the Duration of Time the Property is Used in South Carolina by the Property's Total Useful Life.<sup>36</sup>

Step #3: Multiply the Result of Step #1 by the Result of Step #2.

Step #4: The Result of Step #3 is the State Use Tax due South Carolina on the transient construction property.

South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales tax paid another state, against the South Carolina use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

Note: Machinery, tools and equipment purchased for first use in South Carolina is not "transient construction property" and is subject to the full amount of use tax;<sup>37</sup> however, such purchases qualify for the credit for sales and use taxes, if any, legally due and paid in another state on the purchase of such machinery, tools and equipment.<sup>38</sup>

## **J. Local Sales and Use Taxes**

Retailers (i.e., the contractor's suppliers) who have nexus with South Carolina have nexus for sales and use tax purposes with all local jurisdictions in South Carolina and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered.

The supplier must report local sales or use tax by jurisdiction of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return, or through one of the Department's electronic filing and payment systems.

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<sup>35</sup> The State tax rate is 6% on all transient construction property except items that qualify for the maximum tax under South Carolina Code §12-36-2110. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are taxed at a State rate of 5%. Items subject to the State rate of 6% are also subject to any applicable local taxes administered and collected by the Department on behalf of local jurisdictions. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are not subject to local taxes administered and collected by the Department on behalf of local jurisdictions.

<sup>36</sup> The same unit of time (e.g., days, weeks, months) is used for both the duration of time the property is used in South Carolina and the total useful life of the property.

<sup>37</sup> South Carolina Code §12-36-1310(A).

<sup>38</sup> South Carolina Code §12-36-1310(C).

The liability for the local use tax, as with the state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor and remit it to the Department if the supplier has nexus with South Carolina.<sup>39</sup>

In those situations where the supplier does not collect the local use tax, the contractor must report the tax. Purchases of tangible personal property (not for resale) first stored, used, or consumed in a local tax jurisdiction are subject to the local use tax. Such purchases are to be reported by county and/or municipality where the property is first stored, used, or consumed using the applicable form (e.g., ST-389, UT-3) or through one of the Department's electronic filing and payment systems. See SC Revenue Ruling #18-15 for more information on reporting requirements for purchasers.

Information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality can be found on Form ST-389 and the Department's electronic filing and payment systems.

If the contractor takes delivery in one local tax county and pays that county's local sales tax to the supplier, he is not liable for the local use tax if he takes the property to another local tax county and stores, uses, or consumes the property in that county, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the contractor owes the difference. Also, the contractor is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the full local use tax due.

Construction contracts executed before the imposition date of the local option sales and use tax are exempt from the local option sales and use tax. The exemption from the local tax also applies to written bids that are submitted before the imposition date, and that culminate in a contract executed before or after the imposition date. To come within the exemption, contractors must apply to the Department, using Form ST-10-C. If the application is approved, an exemption certificate will be issued (ST-585). An application form must be filed for each contract, accompanied by a copy of each contract, within six months of the imposition date of the local option sales and use tax. A separate exemption certificate will be issued for each contract.

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<sup>39</sup> See Chapter 13 of this manual for a detailed discussion of nexus.

## Chapter 17

### Communications

Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future.

Communications are subject to sales and use tax under Chapter 36 of Title 12 pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages[.] (Emphasis added.)

It has been the longstanding position of the Department that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms “sale” and “purchase,” which are defined in South Carolina Code §12-36-100 to include “a license to use or consume.”

The South Carolina sales and use tax also addresses two other types of communication services by special imposition. South Carolina Code §§12-36-910(B)(5) and 12-36-1310(B)(5) impose the sales and use tax on the gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.<sup>1</sup>

“Prepaid wireless calling arrangements” means communication services that

- (i) are used exclusively to purchase wireless telecommunications;
- (ii) are purchased in advance;

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<sup>1</sup> See *Unlimited Phone Store, LLC v. South Carolina Dept. of Revenue*, No. 16-ALJ-17-0399-CC (9/21/18), regarding the application of Code Section 12-36-910(B)(5) to sales of prepaid unlimited cellular service plans with unlimited minutes, texting, and data for one or more thirty-day periods. The court held that the plans in question “fall squarely within the definition of ‘prepaid wireless calling arrangements’ pursuant to Section 12-36-910(B)(5),” and that the sales tax applied to the gross proceeds from the sales of those plans.

- (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and
- (iv) are sold in units or dollars, which decline with use in a known amount.

All charges for prepaid wireless calling arrangements must be sourced to the (i) location in this State where the over-the-counter sale took place; (ii) shipping address if the sale did not take place at the seller's location and an item is shipped; or (iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.<sup>2</sup>

South Carolina Code §12-36-2645 imposes the sales and use tax on gross proceeds accruing or proceeding from the business of providing 900/976 telephone service except that the applicable rate of the tax is 11%.

## **A. Exemptions and Exclusions**

The sales and use tax law provides several exemptions and exclusions for the charges taxed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3).

South Carolina Code §12-36-2120(11) exempts:

- (a) toll charges for the transmission of voice or messages between telephone exchanges;
- (b) charges for telegraph messages;
- (c) carrier access charges and customers access line charges established by the Federal Communications [Commission] or the South Carolina Public Service [Commission]; and
- (d) transactions involving automatic teller machines[.]

South Carolina Code §12-36-60, the definition of “tangible personal property,” includes communications<sup>3</sup> and states in part:

Tangible personal property does not include the transmission of computer database information by a cooperative service when the database

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<sup>2</sup> South Carolina Code §§12-36-910(5)(b) and 12-36-1310(5)(b).

<sup>3</sup> Also, since communications services are by statute “tangible personal property,” there can be “wholesale sales” of communications services. See *PalmettoNet, Inc. v. South Carolina Tax Commission*, 318 S.C. 102, 456 S.E.2d 385 (1995).

information has been assembled by and for the exclusive use of the members of the cooperative service. [Emphasis added.]

South Carolina Code §12-36-910(C) excludes from the sales and use tax the gross proceeds accruing or proceeding from charges for or use of data processing. “Data processing” means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

South Carolina Code §12-36-2120(3) exempts from the tax:

- (a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students’ use in the school library of these schools and institutions;
- (b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption; [Emphasis added.]

## **B. Taxable Communication Services<sup>4</sup>**

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3):

- Telephone services,<sup>5</sup> including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP) or any of other method;<sup>6</sup>
- Teleconferencing services;

<sup>4</sup> SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

<sup>5</sup> See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

<sup>6</sup> See SC Private Letter Ruling #14-4 concerning a cloud-based service for processing and routing telephone calls within a customer’s telephone system.

- Paging services;<sup>7</sup>
- Automated Answering Services;<sup>8</sup>
- Cable television services;<sup>9</sup>
- Satellite programming services<sup>10</sup> and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services);
- Fax transmission services;<sup>11</sup>
- Voice Mail Messaging Services;<sup>12</sup>
- E-mail services;<sup>13</sup>
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return;<sup>14</sup>
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website<sup>15</sup> (including Application Service Providers), etc. (not

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<sup>7</sup> See South Carolina Information Letter #89-28.

<sup>8</sup> See South Carolina Information Letter #89-28.

<sup>9</sup> Attorney General Opinion #82-41 (6/9/1982).

<sup>10</sup> Under the Telecommunications Act of 1996, a provider of direct-to-home satellite service is exempt from any tax or fee imposed by a local taxing jurisdiction on direct-to-home satellite service. “The term ‘direct-to-home satellite service’ means only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.” Telecommunications Act of 1996, Pub. L. No. 104-104 (110 Stat. 56), §602.

<sup>11</sup> See South Carolina Revenue Ruling #89-14.

<sup>12</sup> See South Carolina Revenue Ruling #89-14.

<sup>13</sup> See South Carolina Revenue Ruling #89-14.

<sup>14</sup> See South Carolina Revenue Ruling #91-20.

<sup>15</sup> Note: Charges for the ways or means for the transmission of the voice or messages are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Charges by an Internet Service Provider (“ISP”) that allow a customer to access the Internet (“Internet Access”) are charges for the ways and means for the transmission of the voice or messages. However, as discussed below, the Department has not and will not enforce the assessment and collection of the sales and use tax on Internet Access.

In 1998, Congress established a temporary tax moratorium on Internet Access in the Internet Tax Freedom Act. The moratorium was first extended by the Internet Nondiscrimination Act and was later extended several times. The tax moratorium on Internet Access was eventually made permanent as part of the Trade Facilitation and Trade Enforcement Act of 2015. The moratorium prohibits the taxation of Internet Access – a service that allows a user to connect to “the myriad of computer and communications facilities ... which comprise the interconnected world-wide network of networks” known as the Internet (47 U.S.C. Section 1105(4) and (5)).

including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service);<sup>16</sup>

- Streaming services for television programs, movies, music, and other similar content;<sup>17</sup> and
- Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System.<sup>18</sup>

Note: It is the Department's opinion that charges for mobile satellite communication services, such as automobile satellite radio programming or other mobile communication services, are sourced to the primary place of use of the customer (e.g., the residence of an individual customer) as defined in the Mobile Telecommunications Sourcing Act. (Pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), "charges for mobile telecommunications services ... must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code.")

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(5) or 12-36-2645:

- Prepaid wireless calling arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5)<sup>19</sup> (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see South Carolina Revenue Ruling #04-4.); and

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Since charges to access or use an individual database, such as a website, do not constitute an access to the Internet, these charges do not come within the moratorium and are subject to the tax. Charges to access or use an individual database, such as a website, have been held subject to the tax since 1989 and not subject to the moratorium since 1998. (See SC Revenue Ruling #89-14 which taxed charges to access an individual website as a "database access transmission" as well as SC Revenue Ruling #04-15, SC Revenue Ruling #06-8, and SC Revenue Ruling #17-2.)

Therefore, charges by a third party to access or use that third party's individual website are subject to the sales and use tax (e.g., monthly charges to access a sports website).

<sup>16</sup> See South Carolina Revenue Ruling #89-14 and South Carolina Private Letter Rulings #20-4, #20-1, #10-2, and #89-21. While the Department has held an ASP (also known as Software as a Service ("SaaS")) as subject to the sales and use tax as a communications service, see SC Private Letter Ruling #14-2 where the Department held a taxpayer's Infrastructure as a Service ("IaaS") was not subject to the sales and use tax as a communications service.

<sup>17</sup> See South Carolina Revenue Ruling #16-5 and South Carolina Private Letter Ruling #18-1.

<sup>18</sup> See South Carolina Private Letter Ruling #14-4.

<sup>19</sup> See *Unlimited Phone Store, LLC v. South Carolina Dept. of Revenue*, No. 16-ALJ-17-0399-CC (9/21/18), regarding the application of Code Section 12-36-910(B)(5) to sales of prepaid unlimited cellular service plans with unlimited minutes, texting, and data for one or more thirty-day periods. The court held that the plans in question "fall squarely within the definition of 'prepaid wireless calling arrangements' pursuant to Section 12-36-910(B)(5)," and that the sales tax applied to the gross proceeds from the sales of those plans.

- 900/976 telephone services (The State tax rate on this type of communication service is 11%, not 6%).

## C. Non-Taxable Communication Services<sup>20</sup>

Charges for the following communication services are **not** subject to the sales and use tax imposed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3):

- Telephone services specifically exempted from the tax, such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission;<sup>21</sup>
- Telegraph messages;<sup>22</sup>
- Communication services involving automatic teller machines;<sup>23</sup>
- Data processing services;<sup>24</sup>
- Computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service;<sup>25</sup>
- Electronic filing of tax returns when the return is electronically filed by a person who prepared the tax return;<sup>26</sup>
- Internet Access (Services that allow a user to connect to “the myriad of computer and communications facilities ... which comprise the interconnected world-wide network of networks” known as the Internet. This does not include charges to access individual websites, as described above in “Taxable Communication Services.”);
- Non-Automated Voice Mail Messaging Services, including Non-Automated Answering and Messaging Services; and
- Other charges specifically exempt from the tax under State law or federal law.

<sup>20</sup> SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

<sup>21</sup> South Carolina Code §12-36-2120(11).

<sup>22</sup> South Carolina Code §12-36-2120(11).

<sup>23</sup> South Carolina Code §12-36-2120(11).

<sup>24</sup> SC Regulation 117-329; South Carolina Revenue Ruling #17-2; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1.

<sup>25</sup> South Carolina Code §12-36-60.

<sup>26</sup> See South Carolina Revenue Ruling #91-20.



The Department has also determined that charges for electronically monitoring a customer's home or business for the purpose of burglary and fire protection were not subject to the sales and use taxes since such charges were not charges for access to, or use of, a communication system (ways or means for the transmission of the voice or messages). The sale or lease of equipment to the customer, or the use of the equipment by the monitoring company, was held subject to the tax based on the specific facts and circumstances.<sup>27</sup>

## **D. “Bundled Transactions”**

For a customer bill rendered on or after January 1, 2004 that includes telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

Note: A “bundled transaction” is “a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes.”

**Note: This publication attempts to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. Charges for other communication services not listed in this publication are still subject to the tax if they constitute charges for the ways or means for the transmission of the voice or messages and are not otherwise exempted under the law.**

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<sup>27</sup> See South Carolina Private Letter Ruling #97-4 and South Carolina Technical Advice Memorandum #95-1.

## Chapter 18

### Catawba Indian Reservation - State and Tribal Sales and Use Taxes

#### A. The Catawba Indian Claims Settlement Act

Chapter 16, Title 27 of the South Carolina Code of Laws is known as “The Catawba Indian Claims Settlement Act” (“The Act”). The Act is based on the agreement in principle reached between the State of South Carolina and the Catawba Indian Tribe to settle differences between the two parties.

This act took effect on November 29, 1993, when the Governor certified that the Counties of York and Lancaster had taken all actions required of them by the Settlement Agreement and that the federal implementing legislation enacted by Congress and signed in law by the President was consistent with the Settlement Agreement.

South Carolina Code §27-16-130 of the Catawba Indian Claims Settlement Act reads, in part:

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

- (1) Purchases made by the Tribe for tribal government functions **during ninety-nine years from the effective date of this chapter** are exempt from state and local sales and use taxes.
- (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes.
- (3) **During ninety-nine years from the effective date of this chapter**, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.

- (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.<sup>1</sup>
- (b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.
- (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.
- (d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

## **B. Application of State and Tribal Sales and Use Taxes to Sales of Tangible Personal Property Delivered on the Reservation**

Based on the Catawba Indian Claims Settlement Act, the following chart outlines the application of sales and use taxes to sales to individual members of the Catawba Indian Tribe:

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<sup>1</sup> The South Carolina Tax Commission is now the South Carolina Department of Revenue.

<u><b>Delivery on the Reservation From:</b></u>	<u><b>Type Tax Applicable</b></u>	<u><b>Administered and Collected By:</b></u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (6%) *	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (6%) *	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate)	Catawba Indian Tribe

\*Local taxes would not be applicable in these circumstances.

Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects sales and use tax. York County imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. **Effective May 1, 2016**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 1% for sales of unprepared foods\*\*

For sales (deliveries) made on the Reservation within York County:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods\*\*\*

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

**\*\* Note: Lancaster County “re-imposed” the Capital Projects Sales and Use Tax on May 1, 2016, at which time the tax exempted sales of unprepared food. Therefore, the tribal sales and use tax rate for sales of unprepared food delivered on the Reservation within Lancaster County is 1% (instead of 2%).**

**\*\*\*Note: York County’s 1% Capital Projects Tax, which expired on April 30, 2018, was “re-imposed” effective the next day, May 1, 2018. The Capital Projects Tax in York County continues to exempt sales of unprepared food.**

## **C. Purchases by the Tribe for Tribal Government Functions<sup>2</sup>**

Sales to, or purchases by, the Catawba tribal government for tribal government functions are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993). Sales to, or purchases by, the Catawba tribal government for tribal government functions will be subject to state and local sales and use taxes beginning November 29, 2092.

## **D. Artifacts Made by Members of the Tribe<sup>3</sup>**

Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes. Unlike the other exemptions enacted in South Carolina Code §27-16-130(H), this exemption does not automatically expire on November 28, 2092 (99 years after the Act took effect on November 29, 1993).

For purposes of this exemption, the phrase “artifacts made by members of the Tribe” means objects, including tools, weapons and ornaments, produced or shaped by the workmanship of one or more members of the Catawba Indian Tribe that are associated with the culture or history of the Tribe.

## **E. Sales on the Reservation<sup>4</sup>**

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the

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<sup>2</sup> South Carolina Code §27-16-130(H)(1).

<sup>3</sup> South Carolina Code §27-16-130(H)(2).

<sup>4</sup> South Carolina Code §27-16-130(H)(3).

Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of the sale are one hundred dollars or less. Sales on the Reservation will be subject to state and local sales and use taxes beginning November 29, 2092.

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are subject to the Catawba tribal sales and use tax until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of sale are one hundred dollars or less. Sales on the Reservation will no longer be subject to the Catawba tribal sales and use tax beginning November 29, 2092.

## **F. Tangible Personal Property Made by Members of the Tribe (Other than Artifacts)**

### Delivered Off the Reservation within South Carolina

When tangible personal property, other than pottery and artifacts made by members of the Tribe, is sold and delivered by a retailer to a location in South Carolina but outside the reservation, sales of these items off the Reservation are subject to state and local sales taxes and are not subject to the tribal sales tax.

### Delivered Off the Reservation Outside of South Carolina

When tangible personal property is sold and delivered by a retailer to a location outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.<sup>5</sup>

When tangible personal property is sold and delivered by a retailer to the mails or to a common carrier for delivery outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.<sup>6</sup>

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<sup>5</sup> South Carolina Code §12-36-2120(36).

<sup>6</sup> South Carolina Code §12-36-2120(36).

## **G. Accommodations**

Accommodations furnished on the Reservation are subject to the tribal sales tax at a rate of 9% for accommodations furnished in Lancaster County and at a rate of 8% for accommodations furnished in York County. Additional guest charges imposed on the Reservation are subject to the tribal sales tax at a rate of 8% in Lancaster County and at a rate of 7% in York County.

## **H. Maximum Tax Items**

For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5%<sup>7</sup> in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes administered and collected by the Department on behalf of local jurisdictions), but the tax may not exceed the maximum tax set forth in South Carolina Code §12-36-2110.<sup>8</sup>

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<sup>7</sup> The tribal tax rate for items subject to the maximum tax must equal the combined state and local rate for the counties in which the Reservation is located. Since the state sales and use tax rate for maximum tax items is 5%, at this time the tribal tax rate of maximum tax items would be 5% (equal to the 5% state rate and the 0% local rate since maximum tax items are not subject to local taxes).

<sup>8</sup> See Chapter 10 of this publication for information on the maximum tax provisions of South Carolina Code §12-36-2110.

## Chapter 19

### Motion Picture Production Companies

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location.

The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a “motion picture company” for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

#### A. “Motion Picture Production Company” Comprehensive Exemption

To qualify for the sales and use tax exemption in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a “motion picture production company” as defined in South Carolina Code §12-62-20(4). It is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It is not a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

A “motion picture” is defined in South Carolina Code §12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic



events or a production produced by a motion picture production company if records, as required by 18 U.S.C. § 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

2. The company must intend to spend \$250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.
3. The company must complete an application and obtain approval as a certified motion picture production company from the South Carolina Department of Parks, Recreation and Tourism. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the South Carolina Department of Parks, Recreation and Tourism before South Carolina filming begins.

The application and certification procedures can be obtained from the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism at 803-737-0490. There is no application fee.

### Important Points to Remember

1. Once the South Carolina Department of Parks, Recreation and Tourism notifies the Department of Revenue that the company is approved and meets the qualifying requirements, the Department of Revenue will issue the motion picture production company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.
2. This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department on behalf of a local jurisdiction.
3. The exemption expires on the date filming or production ends.
4. An approved company that fails to spend \$250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted.

5. This incentive does not apply to the production of television coverage of news and athletic events.
6. Expenditures that qualify toward the \$250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.
7. The exemption certificate may only be used by the motion picture production company in whose name the exemption certificate has been issued since the exemption only applies to sales to or purchases by the motion picture production company.

Examples of persons who are not authorized to use the exemption certificate include, but are not limited to, (1) cast and crew purchasing items for their personal use and (2) subcontractors or others providing services to the motion picture production company.

#### Examples of Exempt Tangible Personal Property<sup>1</sup>

Aircraft  
 Animals  
 Cameras and camera parts  
 Catering  
 Cleaning supplies  
 Cleanup equipment  
 Computer equipment  
 Construction and hardware materials  
 Copies  
 Copy machines  
 Filming supplies (e.g., film stock, flats (panels of scenery), sandbags, etc.)  
 Food  
 Gasoline and other fuels (however, motor fuel user fees may apply)<sup>2</sup>

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<sup>1</sup> The exemption only applies to purchases by the motion picture production company, provided such purchases are used in connection with the filming or production of a motion picture, purchased by the motion picture production company, and all other requirements of the statute are met. For example, the purchase of hairstyling supplies by a motion picture production company are exempt, but the purchase of such supplies by an independently owned hairstyling service company that has been hired by a motion picture production company to provide hairstyling services are subject to the tax.

<sup>2</sup> As a general rule, gasoline and undyed diesel fuel are subject to a motor fuel user fee and are exempt from sales and use taxes. Dyed diesel fuel and dyed kerosene are subject to sales and use taxes (unless otherwise exempt under the law) and exempt from the motor fuel user fee. As such, the exemption certificate (Form ST-433) issued to the motion picture production company does not need to be presented upon the purchase of gasoline and undyed diesel fuel, but should be presented to the retailer to purchase dyed diesel fuel and dyed kerosene exempt from the sales and use tax. The statute does not provide an exemption for the motor fuel user fee for motion picture production companies.

- Hairstyle supplies
- Hand tools
- Make-up
- Office supplies and equipment
- Portable toilets
- Production supplies (e.g., editing supplies)
- Props (e.g., furniture, books, paintings, clothing, shrubbery)
- Technical equipment and machinery (e.g., boom, cables, dolly, editing equipment, matte, tape, teleprompter)
- Telephones
- Walkie talkies
- Wardrobe

### Examples of Exempt Services and Charges<sup>3</sup>

Communication services, such as

- Cable and satellite programming television services
- Database access transmission services (On-line information services)
- E-mail services
- Fax transmission services
- Paging services
- Prepaid wireless calling arrangements
- Teleconferencing services
- Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

- In-room movies
- Laundering and drycleaning services
- Rentals of meeting rooms
- Room service
- Telephone service

- Electricity
- Laundering, drycleaning, dyeing or pressing services<sup>4</sup>
- Sleeping/lodging accommodations/services

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<sup>3</sup> The services and charges listed in this category are normally subject to the tax under South Carolina Code §§12-36-910(B), 12-36-920, 12-36-1310(B), 12-36-1110 and 12-36-2645, but are exempt when purchased by a motion picture production company meeting the requirements of the South Carolina Motion Picture Incentive Act for use in connection with the filming or production of a motion picture.

<sup>4</sup> Certain drycleaning facilities are participating in the Drycleaning Facility Restoration Trust Fund and are subject to a 1% drycleaning surcharge. While this surcharge is administered and collected in the same manner as the state sales and use tax, it is not a sales tax. As such, drycleaning services purchased by a motion picture production company are not exempt from the 1% drycleaning surcharge.

900/976 telephone services

Warranty, maintenance and similar service contracts for tangible personal property

Note: For more detailed information concerning the taxation of additional guest charges at places furnishing sleeping accommodations, see SC Regulation 117-307.1. For more detailed information concerning the taxation of certain communication services, see SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

### Examples of Nontaxable Services, Nontaxable Intangibles, and Nontaxable Real Property Transactions<sup>5</sup>

The following are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed.

#### Services

- Accounting services
- Airline and aircraft charter services
- Casting services
- Chauffeured limousine services
- Clerical services
- Construction services
- Filming and production services provided by the director, the actors, the crew, writers, editors, choreographers, stunt persons, dialog coaches, musicians, technical advisors, designers, hairstylists, makeup artists, wardrobe persons, and similar persons providing services
- Garbage disposal services
- Hairstyling/cosmetic services
- Janitorial services
- Legal services
- Meteorological services
- Musical services
- Payroll services
- Research services
- Scouting services

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<sup>5</sup> These are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed. Since the film industry operates in many states and must deal with varying sales and use tax laws, this list merely provides examples of services, intangibles, and real property transactions the charges for which are not taxable in South Carolina. However, it is important to note that purchases by persons providing these services to a motion picture production company or any other person are subject to the tax. For example, charges by a janitorial service company to a motion picture production company or any other person are not subject to the tax; however, the sale to, or purchase by, the janitorial service company of the supplies (mops, floor cleaners, trash bags, etc.) it uses in providing its service are subject to the sales and use tax.

Security services  
Taxi services  
Typing services

Intangibles  
Music royalties  
Story rights payments

Real Property Transactions  
Auditorium rentals  
Back lot rentals  
Casting facility rentals  
Dressing room rentals  
Location rentals or fees  
Office space rentals  
Parking lot rentals  
Screening room rentals  
Stage rentals  
Warehouse rentals

For additional information concerning this exemption, see South Carolina Revenue Ruling #08-12.

## **B. “Motion Picture Company” Limited Exemption for Supplies and Equipment**

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.
2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

Important Points to Remember

1. To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department on Form ST-10, "Application for Certificate." There is no application fee. Usually, a visit will be made to the company's site to determine if a certificate should be issued.
2. Once approved, the Department will issue the company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
3. The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department on behalf of a local jurisdiction.
4. An application or approval from the South Carolina Film Commission is not needed for this exemption.

## Chapter 20

# Medicine, Prosthetics and Medical Supplies<sup>1</sup>

## A. Exemptions for Medicines, Prosthetic Devices, and Other Medical Supplies

The following exemptions are available with respect to medicines, prosthetic devices and certain other medical supplies:

**Medicine sold by prescription.**<sup>2</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription, the sale must require a prescription, and must actually be sold by prescription. As such, sales of medicine to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

**Prescription medicines used to prevent respiratory syncytial virus.**<sup>3</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

**Prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.**<sup>4</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription (other than therapeutic radiopharmaceuticals); however, the medicine does not need to be sold by prescription. As such, sales of these medicines and therapeutic radiopharmaceuticals (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

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<sup>1</sup> See South Carolina Revenue Ruling #11-3.

<sup>2</sup> South Carolina Code §12-36-2120(28)(a). See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009). See also *Associated Medical Specialist, P.A. v. South Carolina Tax Commission and South Carolina Department of Revenue*, SC Ct. of App., Unpublished Opinion No. 97-UP-447 (1997). (Note, this case dealt with prescription medicines purchased by doctors to treat cancer; however, the exemption for prescription medicines used in the treatment of cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of any such treatment was not available at the time. It was subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999. (Act 362, Section 2, of 1998))

<sup>3</sup> South Carolina Code §12-36-2120(28)(a).

<sup>4</sup> South Carolina Code §12-36-2120(28)(a).

**Prescription medicines used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.**<sup>5</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home or doctor are exempt.

**Free samples of prescription medicine distributed by its manufacturer and any use of these free samples.**<sup>6</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription.

**Medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients.**<sup>7</sup> This exemption applies to all types of medicines, not just prescription medicines.

**Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies.**<sup>8</sup> While a prescription is not required, in order for this exemption to be applicable, these items must be sold to a diabetic under the written<sup>9</sup> authorization and direction of a physician.

**Disposable medical supplies.**<sup>10</sup> In order for this exemption to be applicable, disposable medical supplies such as bags, tubing, needles, and syringes, must be dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, must be used for the intravenous administration of a prescription drug or medicine, and must come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center. The exemption applies to “disposable” medical supplies sold on or after August 17, 2000 and does not apply to items that are reusable such as electronic pumps and other medical equipment. In addition, the exemption does not apply to supplies, such as gauze, that do not require a prescription in order to be sold to the patient.

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<sup>5</sup> South Carolina Code §12-36-2120(28)(a).

<sup>6</sup> South Carolina Code §12-36-2120(28)(a).

<sup>7</sup> South Carolina Code §12-36-2120(28)(d).

<sup>8</sup> South Carolina Code §12-36-2120(28)(b).

<sup>9</sup> SC Regulation 117-332. See also *Drummond v. State of South Carolina*, Court of Common Pleas, Case No. 02-CP-40-4651 (2010).

<sup>10</sup> South Carolina Code §12-36-2120(28)(c).



**Prosthetic devices sold by prescription.**<sup>11</sup> In order for this exemption to be applicable, the sale must require a prescription and the device must actually be sold by prescription and the device must replace a missing part of the body. A device that merely replaces a missing function is not exempt.<sup>12</sup> As such, sales of prosthetic devices to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.<sup>13</sup>

**Dental prosthetic devices.**<sup>14</sup> In order for this exemption to be applicable, the device must pertain to dentistry and must replace a missing part of the body. A device that merely replaces a missing function is not exempt.<sup>15</sup> The sale does not require a prescription.

**Prescription drugs – Medicare Part A Nursing Home Patient.**<sup>16</sup> In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. It must be sold to a nursing home to be dispensed to a Medicare Part A patient residing in the nursing home.

**Prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic that provides medical and dental care without charge to all of its patients.**<sup>17</sup> In order for this exemption to be applicable, the medicine (whether prescription or over-the-counter) and medical supplies must be sold a health care clinic, the clinic must provide both medical and dental care, and the care must be provided without charge to all patients.

**Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws.** In order for the purchase of the durable medical equipment and related supplies to be exempt, the purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, state or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax, and the durable medical equipment and related supplies must be sold by a

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<sup>11</sup> South Carolina Code §12-36-2120(28)(a).

<sup>12</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009) wherein the Court held that devices that did not replace missing parts of body but only replaced functions did not meet the approved regulatory definition of prosthetic device.

<sup>13</sup> See *CareAlliance Health Services v. South Carolina Department of Revenue*, 416 S.C. 484, 787 S.E.2d 475 (2016) (holding that sales of orthopaedic prosthetic devices by a vendor to a hospital are not exempt from sales and use tax under South Carolina Code §12-36-2120(28) because such sales do not require a prescription), *rehearing denied*, (July 14, 2016), *on remand*, 12-ALJ-17-0405-AP (Nov. 2, 2016) (order dismissing only remaining legal issue of whether blood derivatives are subject to sales and use taxes).

<sup>14</sup> South Carolina Code §12-36-2120(28)(e).

<sup>15</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).

<sup>16</sup> South Carolina Code §12-36-2120(28)(f).

<sup>17</sup> South Carolina Code §12-36-2120(63).

provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina. Note: Effective January 1, 2013, sales meeting the requirements of this exemption are fully exempt from both state and local sales and use taxes.<sup>18</sup>

**Injectable Medications and Injectable Biologics.** In order for this exemption to be applicable, the medication or biologic must be administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

This exemption was to be phased-in depending upon the forecasts of annual general fund revenue growth as determined by the Board of Economic Advisors. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements had been met to implement this exemption.<sup>19</sup>

Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases were exempt from the State and local sales and use taxes. On July 1, 2015, qualifying sales or purchases became fully exempt from the State and local sales and use taxes.

**Viscosupplementation therapies.** This exemption was re-enacted through a temporary proviso in the budget for State Fiscal Year 2020 - 2021 (July 1, 2020 - June 30, 2021).<sup>20</sup>

## B. Other Relevant Exemptions

The statute also provides several other exemptions that may or may not apply.

**Sales to the federal government.** South Carolina Code §12-36-2120(2) exempts sales of “tangible personal property...to the federal government.” SC Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

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<sup>18</sup> An uncoded provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncoded provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of South Carolina Code §12-36-2120(74) is fully implemented. Local sales and use taxes will continue to apply until the exemption is fully implemented. Once the exemption is fully implemented, sales meeting the requirements of the exemption will be fully exempt from both state and local sales and use taxes.

<sup>19</sup> SC Information Letter #14-4.

<sup>20</sup> Act No. 135 of 2020, Part IB, Proviso 117.60.

**Sales to charitable hospitals.** South Carolina Code §12-36-2120(47) exempts sales of tangible personal property to charitable hospitals that are exempt from property taxation under South Carolina Code §12-37-220; predominantly serve children; and where the care is provided without charge to the patient.

**Sales of hearing aids.** South Carolina Code §12-36-2120(38) exempts sales of “hearing aids, as defined by South Carolina Code §40-25-20(5).” Hearing aid batteries and cords are excluded from the definition of “hearing aid;” therefore, sales of these items are not exempt from the tax.

**Sales during the sales tax holiday.** South Carolina Code §12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
  - (i) clothing;
  - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
  - (iii) footwear;
  - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;
  - (v) computers, printers and printer supplies, and computer software;
  - (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.
- (b) The exemption allowed by this item does not apply to:
  - (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
  - (ii) sales of furniture;
  - (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
  - (iv) rental of clothing or footwear;
  - (v) a sale or lease of an item for use in a trade or business.
- (c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

Note: Since the sales tax holiday applies to clothing and footwear, the exemption may apply to certain clothing and footwear worn for medical reasons (e.g., diabetic shoes).

## Chapter 21

# Unprepared Food Exemption

The gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons” are exempt from the sales and use tax.<sup>1</sup> This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

## Regulation on Unprepared Food Exemption

**The following is the regulation concerning the exemption for unprepared foods. This regulation is printed here in its entirety since it is believed that it provides the best explanation of the exemption.**

### **117-337 Sales of Unprepared Food**

Effective November 1, 2007, South Carolina Code §12-36-2120(75) exempts from the state sales and use tax the gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.” This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are

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<sup>1</sup> South Carolina Code §12-36-2120(75). See also SC Regulation 117-337, “Sales of Unprepared Food,” and SC Revenue Ruling #07-4, “Exemption for Unprepared Foods.”

eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

This regulation will explain which sales of food qualify or do not qualify for the exemption under South Carolina Code §12-36-2120(75).

### **117-337.1 “Eligible Food” Defined**

For purposes of this regulation, the term “eligible food” is food eligible for the exemption under South Carolina Code §12-36-2120(75) that will be defined to include and exclude the following:

- (A) Foods eligible for the exemption under South Carolina Code §12-36-2120(75) include:
  - (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
  - (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers);<sup>2</sup> and,
  - (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed below.
- (B) Food and other items which are not eligible for the exemption under South Carolina Code §12-36-2120(75) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:
  - (1) Alcoholic beverages, such as beer, wine, or liquor;
  - (2) Hot beverages ready-to-drink such as coffee;
  - (3) Tobacco;
  - (4) Hot foods ready to eat;
  - (5) Foods designed to be heated in the store;

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<sup>2</sup> See South Carolina Revenue Ruling #16-8 which clarifies that this exemption includes sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants to individuals to grow food in a home garden for personal use and consumption.

- (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
- (7) Vitamins and medicines;
- (8) Pet food;
- (9) Any non-food items such as tissue, soap or other household goods;
- (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,
- (11) Prepared meals or food as defined in SC Regulation 117-337.2.

### **117-337.2 “Prepared Meals or Food” Defined**

- (A) “Prepared meals or food” is food for immediate consumption (based on the type of food and the type of location selling the food) and is not eligible for the exemption under South Carolina Code §12-36-2120(75), but is subject to the full state sales and use tax rate.

“Prepared meals or food” are meals or food sold by a business, or from an identifiable location within a business, which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises. Such a business, or identifiable location within a business, may be mobile or immobile and may or may not provide seating accommodations for its customers. For example, “prepared meals or food” includes, but is not limited to (a) meals or food sold by a restaurant, cafeteria, lunch wagon or cart, lunch counter, cafeteria, ice cream stand, tavern, night club, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption, (b) meals prepared and delivered by a meal delivery service; (c) meals sold to or at congregate meal sites; (d) meals or food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals or food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller, (e) meals or food sold at hotels, motels, or other places furnishing accommodations; (f) meals or food sold at newsstands, gift shops, and snacks bars located in offices or other public or commercial buildings; (g) meals or food sold at movies theaters, opera houses, fairs, carnivals, stadiums, auditoriums, amphitheaters, or similar entertainment or sports facilities; and (h) food sold through vending machines.

- (B) Exception: If a store, or an identifiable location within a store, advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides

seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises and also sells food that is prepared for home consumption, sold for home consumption, and is not the type of food intended for immediate consumption, then such “home consumption” food is not considered “prepared meals or food” and would be “eligible food” exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided it is not one of the foods listed above in SC Regulation 117-337.1(B) – Items (1) through (10).

The following are examples of this exception:

- (a) A grocery store has a deli/bakery that provides tables, chairs, benches, booths, counters or an area where customers may consume food in or near the store. In addition to other items, this deli/bakery area sells loaves of baked bread (the bread it is not hot at the time of sale)

The sales at retail of the loaves of bread are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the store or delivered to a location other than a private residence.

- (b) A coffee shop sells individual slices of cake to be eaten with the coffee and other drinks sold at the shop. The shop also sells entire sheet cakes.

The sale at retail of the sheet cake is exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the shop or delivered to a location other than a private residence.

- (C) Some sales of meals or food may be exempt from the sales and use tax under other exemption provisions. For example, South Carolina Code §12-36-2120(10) provides exemptions from the sales and use tax for (1) meals or foodstuff used in furnishing meals to school children within school buildings on a nonprofit basis; (2) meals or foodstuff provided to elderly or disabled persons at home by certain nonprofit organizations; (3) prepared or packaged foodstuff sold to nonprofit organizations for the homeless and needy; or (4) meals or prepared or packaged foodstuff sold to public and nonprofit organizations for congregate or in-home service to the homeless, needy, disabled adults over eighteen years of age or persons over sixty years of age (provided the meals or packaged foodstuffs in this item (4) are eligible for purchase with USDA food coupons). South Carolina Code §12-36-2120(41) exempts from the sales and use tax tangible personal property, including meals or food, sold by certain nonprofit organizations.



### **117-337.3 General Rules**

**(A) Sales of “Eligible Food” by Grocery, Convenience and Similar Stores Authorized to Accept Food Stamps:**

Sales of “eligible food” by a grocery, convenience or similar store authorized to accept food stamps shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate, unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a neighborhood grocery store also has a lunch counter, then sales from that lunch counter are for immediate consumption and subject to the tax at the full sales tax rate. If the lunch counter also sold entire sheet cakes, then the sale at retail of a sheet cake would be exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) provided the sale is not for a party or gathering held at the store or delivered by the store to a business or institution.

**(B) Sales of “Eligible Food” by Grocery and Other Stores Not Authorized to Accept Food Stamps:**

Sales of “eligible food” by a grocery, convenience or similar store not authorized to accept food stamps but which is engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get hot dogs or sandwiches that are intended for immediate



consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

(C) Sales of “Eligible Foods” to or by Vending Machine Operators for Sale through Vending Machines:

Sales of “eligible food” to or by vending machine operators for sale through vending machines are for immediate consumption and subject to the sales tax at the full state rate.

(D) Sales of “Eligible Food” to Institutions:

Sales of “eligible food” to the South Carolina Department of Corrections, city or county jails, hospitals, nursing homes, and colleges for use in providing meals to the prisoners, patients, or students are sales to institutions who, under the sales and use tax law, are the users or consumers of such food in carrying out their primary functions of incarcerating convicts, providing medical care or providing an education. As such, sales of such food are not for home consumption and are subject to the sales tax at the full state rate.

(E) Sales of “Eligible Food” Prepackaged with a Non-Eligible Item

Sales of “eligible food” that is prepackaged with a non-eligible item, or sales in which a single price is established for a combination of an “*eligible food*” and a non-eligible item, are subject to the tax at the full state rate.

For example, if a grocery store advertises and sells a basket containing fruit and a bottle of wine, the exemption under South Carolina Code §12-36-2120(75) is not applicable. The full state rate applies.

(F) “Eligible Food” Purchased with Food Stamps:

“Eligible food” purchased with food stamps from a retailer authorized by the United States Department of Agriculture to accept food stamps are exempt from the sales and use tax.

## 117-337.4 Examples

The following examples are provided to assist in understanding the above provisions of this regulation:

- (a) Sales at retail of food delivered to offices and businesses are subject to tax at the full state rate.
- (b) Sales at retail of food delivered to day care centers and similar facilities are subject to tax at the full state rate.
- (c) Sales at retail of bottled water delivered to an individual's home are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75). However, the lease of a water cooler unit to a residential customer is subject to the full state rate.

Sales at retail of bottled water delivered to a commercial enterprise are subject to the tax at the full state rate. The lease of a water cooler unit to a commercial enterprise is also subject to the full state rate.

- (d) Sales at retail of ground coffee, creamer, sugar, tea bags and other "coffee service" products delivered to a commercial enterprise are subject to the tax at the full state rate.
- (e) Sales at retail of drinks, coffee supplies, and snacks by an office supply store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), unless shipped or delivered to a location other than a private residence. Shipments or deliveries to a location other than a private residence are subject to the full state rate.
- (f) Sales at retail by a coffee shop of packaged cold sandwiches, salads, and containers of cut fruit, cookies, muffins, donuts, slices of nut bread, cupcakes, brownies, whole fruit, or similar food products sold individually are subject to the tax at the full state rate.

However, sales at retail of these same food products by the loaf or tray are subject exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) unless such loaf or tray is sold for a party or gathering held at or near the coffee shop or is delivered to a location other than a private residence. Sales at retail of these products by the loaf or tray for a party or gathering held at or near the coffee shop or that are delivered a location other than a private residence are subject to the tax at the full state rate.

- (g) Sales at retail at a location that contains both a restaurant and a convenience or similar store under one roof are taxed at the full state rate for sales from the restaurant portion of the business and are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) for sales from the convenience or similar store portion of the business, unless an exception discussed previously in this regulation applies. For more detailed information, see the above sections of this regulation concerning restaurants and convenience or similar stores.
- (h) Sales at retail of loaves of bread baked in and sold at a bakery in a grocery store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the loaf of bread sold is not “hot food.”

### **117-337.5. Local Taxes**

The exemption in South Carolina Code §12-36-2120(75) for “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons” does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

This regulation is not applicable to any local tax administered and collected by a local jurisdiction.

### **117-337.6. Records**

The seller of “eligible food” exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) shall maintain sufficient documentation to substantiate that a sale qualifies for the exemption from the state sales and use tax, using any method of recording that properly reflects all purchases and sales of such items.

## Chapter 22

### Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department.

#### A. Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.<sup>1</sup>

Fairs, Carnivals, and Athletic Events: The single retail license covers sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Department an itinerary giving a schedule of locations and dates.<sup>2</sup>

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.<sup>3</sup>

Also, an out-of-state retailer must purchase a retail license and collect the South Carolina use tax if the retailer has retail locations in South Carolina; maintains an office, warehouse or other place of business in South Carolina; has a salesperson in South Carolina soliciting orders on a regular basis; has an agent located in South Carolina; delivers his/her goods on his/her own trucks; or has made greater than \$100,000 of gross sales into South Carolina in the current or prior calendar year.<sup>4</sup>

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<sup>1</sup> South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

<sup>2</sup> SC Regulation 117-300.5.

<sup>3</sup> SC Regulation 117-300.2.

<sup>4</sup> This is based on the concept of *nexus* - a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. What actually constitutes *nexus* is determined by the courts and may change from time to time, and you are advised to be aware of changes. See SC Revenue Ruling #18-14 regarding nexus for remote sellers and Chapter 13 of this manual for a more detailed discussion of nexus.

Artists and craftsmen. Every artist and craftsman making retail sales at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.<sup>5</sup>

Transient or temporary businesses. A \$50 license must be purchased by persons operating a transient or temporary business in South Carolina. A retail license for a transient business may only be used for one location at a time. A retail license for a temporary business may only be used in one location.<sup>6</sup>

*A transient business* is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. *A temporary business* is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location.<sup>7</sup> To notify the Department of a change in business location, the retailer should complete Form SC 8822.<sup>8</sup>

The Department may determine which retail license or licenses a retailer must obtain.<sup>9</sup>

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;<sup>10</sup>
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,<sup>11</sup> if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;<sup>12</sup>

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<sup>5</sup> South Carolina Code §12-36-510(A)(2).

<sup>6</sup> South Carolina Code §12-36-510(A)(3).

<sup>7</sup> SC Regulation 117-300.4.

<sup>8</sup> Form SC 8822 can also be used for business name changes and other address changes.

<sup>9</sup> South Carolina Code §12-36-510(D).

<sup>10</sup> South Carolina Code §12-36-510(B)(1).

<sup>11</sup> For purposes of this provision, a festival does not include a recognized state or county fair.

<sup>12</sup> South Carolina Code §12-36-510(B)(2) and South Carolina Code §12-36-2120(39).

- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;<sup>13</sup>
- (d) persons furnishing accommodations to transients where the rental income from such accommodations is wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g);<sup>14</sup>
- (e) certain nonprofit organizations exempt from the sales and use tax under South Carolina Code §12-36-2120(41);<sup>15</sup> and,
- (f) persons engaged in the business of operating vending or coin-operated machines dispensing any tangible personal property other than cigarettes or soft drinks in closed containers. If the person either (1) sells cigarettes or soft drinks in closed containers through vending machines or (2) sells any tangible personal property at retail through any means other than vending machines, they must obtain a retail license.

## **B. Obtaining a Retail License**

A retail license may be obtained by applying on-line at the Department's website at [dor.sc.gov](http://dor.sc.gov) and clicking on "MyDORWAY."

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214-0850.

## **C. Operating Without a Retail License – Penalty**

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate's court. This provision also applies to each officer of a corporation

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<sup>13</sup> South Carolina Code §12-36-510(B)(3). Persons who rent accommodations for one week or less in any calendar quarter must still remit the sales tax on the accommodations annually by April 15<sup>th</sup> of the following year unless otherwise exempt under South Carolina Code §12-36-920(A).

<sup>14</sup> For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.

<sup>15</sup> South Carolina Code §12-36-510(B)(4) and South Carolina Code §12-36-2120(41). See also South Carolina Revenue Procedure #03-6 and South Carolina Revenue Ruling #10-1 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

which engages in business without a retail license or after the license is suspended.<sup>16</sup> In addition, this provision<sup>17</sup> may be enforced by local law enforcement authorities as well as the Department.<sup>18</sup>

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.<sup>19</sup>

## **D. Returning a License<sup>20</sup>**

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the Department for cancellation and the taxpayer must remit unpaid or accrued taxes.<sup>21</sup>

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

## **E. Purchaser's Certificate of Registration**

A Purchaser's Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.<sup>22</sup> Those licensed as retailers do not need a Purchaser's Certificate of Registration.

A completed application (Form SCDOR-111) may be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser's Certificate of Registration.

## **F. Special Events Returns<sup>23</sup>**

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return. A special event is any promotional show, trade show, fair or carnival for

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<sup>16</sup> South Carolina Code §12-36-560.

<sup>17</sup> South Carolina Code §12-36-560.

<sup>18</sup> Attorney General Opinion dated 1/29/1996.

<sup>19</sup> South Carolina Code §12-36-570.

<sup>20</sup> South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

<sup>21</sup> Form C-278 is used to closeout an account with the Department for a business that has been sold or closed permanently.

<sup>22</sup> For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see South Carolina Revenue Ruling #18-9.

<sup>23</sup> South Carolina Code §12-36-510(C).

which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

The Department does not have a separate form called a *special events return*. A retailer should file Form ST-3 (and Form ST-389 if applicable) and write “***Special Events Return,***” or similar notation, on the face of each form. The discount for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department may require earlier filing and payment, if deemed necessary.

## G. Types of Paper Returns

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer’s business. The following forms are used depending on the taxpayer’s business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
General Form	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389, ST-593
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 12 and SC Revenue Ruling #18-15 for information on a retailer’s responsibilities for remitting local sales and use taxes.

Note: A retailer with two or more locations may apply to file a “consolidated” sales tax return. See the Department’s website for more information about this new method.



## H. Reporting Requirements

Any tax due must be paid with the return and reported to the Department under one of the following methods:

Monthly Returns. Generally, every taxpayer required to file their sales and/or use tax return must file the tax return on a monthly basis, unless permission is granted by the Department to use one of the other methods listed below. The return is due by the 20th day of the month following the month in which liability for the tax arises.<sup>24</sup> For example, sales made in April are reportable to the Department by May 20. Any tax due is payable with the return.

28-day returns. The Department may allow filing of returns for 28-day periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.<sup>25</sup>

Quarterly returns. The Department may allow a taxpayer to file quarterly, instead of monthly; if the taxpayer's monthly tax liability is \$100 or less.<sup>26</sup>

Other Filing Periods. The Department may authorize, in addition to monthly or quarterly, other filing periods.<sup>27</sup>

Note: With respect to any return due (*e.g.*, monthly, quarterly, etc.), the taxpayer must file the return even if the taxpayer did not make any sales during that tax period or had a zero tax liability for that period.

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.<sup>28</sup>

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.<sup>29</sup>

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its

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<sup>24</sup> South Carolina Code §12-36-2570(A) & (B).

<sup>25</sup> South Carolina Code §12-36-2570(D).

<sup>26</sup> South Carolina Code §12-36-2580.

<sup>27</sup> South Carolina Code §12-36-2590.

<sup>28</sup> SC Regulation 117-327.

<sup>29</sup> SC Regulation 117-327.

business and the leased departments using “Schedule of Locations” to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.<sup>30</sup>

## I. Reporting and Paying the Tax Electronically

### MyDORWAY

The Department’s Electronic Tax System (MyDORWAY) is designed to give taxpayers a fast, free and secure way to file and pay their sales, use, accommodations, local option and special local taxes online. MyDORWAY is effective for sales and use tax returns due on or after September 1, 2015. All sales and use tax returns used for reporting the 6% State sales and use tax, and applicable local sales and use taxes administered and collected by the Department on behalf of local jurisdictions, may be filed via MyDORWAY.

The Department’s MyDORWAY System will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

To register, visit the Department’s website ([dor.sc.gov](http://dor.sc.gov)) and click on MyDORWAY. For additional assistance, call toll free (844) 898-8542 or email [MyDORWAY@dor.sc.gov](mailto:MyDORWAY@dor.sc.gov).

### Electronic Filing Program (EFT/XML)

The Department has designed an Electronic Filing Program (EFT/XML) for the transmission of the payment and filing of tax return information for **sales, use, accommodations, local option and/or special local taxes**.

Businesses that have paid \$15,000 or more, during any one filing period during the past year, are required to file and pay electronically.<sup>31</sup> Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/XML Program. For further information, call 1-800-476-0311.

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/XML must file and pay all of these taxes through EFT/XML. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different method.

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<sup>30</sup> SC Regulation 117-327.

<sup>31</sup> South Carolina Code §12-54-250.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in electronic programs include:

- (1) Eliminates paperwork; no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

## **J. Discount for Timely Payment**

If returns are filed and the taxes paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, your discount is 2% of the tax.<sup>32</sup>

The maximum discount allowed per taxpayer (*all locations included*) during the state's fiscal year (*July 1 - June 30*) is \$3,000. The statute was amended (effective July 1, 2002) to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.<sup>33</sup>

Nonresident retailers not required by law to collect South Carolina sales or use tax, but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

In calculating the maximum discount (whether \$3,000, \$3,100 or \$10,000), begin with the June return filed in July and end with the May return filed in June.<sup>34</sup>

## **K. Cash Deposit or Bond**

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.<sup>35</sup>

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<sup>32</sup> South Carolina Code §12-36-2610.

<sup>33</sup> South Carolina Code §12-36-2610.

<sup>34</sup> South Carolina Code §12-36-2610.

<sup>35</sup> South Carolina Code §12-36-520.

## L. Recordkeeping

Every person subject to the sales and/or use taxes is required to keep “records, receipts, invoices and other pertinent papers in the form the Department requires.”<sup>36</sup> This includes records in electronic format.<sup>37</sup> Purchase invoices must show the names and addresses of vendors from whom purchases are made.<sup>38</sup>

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.<sup>39</sup>

Records must be kept for a period of **four years**.<sup>40</sup>

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.<sup>41</sup>

## M. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer’s return was filed, or due to be filed, whichever occurs later.<sup>42</sup>

For example, if a taxpayer files the September 2020 sales and use tax return on the due date, October 20, 2020, the Department has until October 20, 2023, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the September 2020 return late on November 30, 2020, the Department has until November 30, 2023, to determine if additional taxes are due and assess the taxpayer for those taxes.

However, there are exceptions to the three-year limitation to assess additional taxes. The Department may assess for additional taxes after the three-year period if:

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.<sup>43</sup> This consent form must be completed before the three-year time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.

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<sup>36</sup> South Carolina Code §12-36-2540(A); South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

<sup>37</sup> SC Regulation 117-200.2.

<sup>38</sup> South Carolina Code §12-36-2540(C).

<sup>39</sup> South Carolina Code §12-36-2540(B).

<sup>40</sup> SC Regulation 117-200.1.

<sup>41</sup> South Carolina Code §12-54-210.

<sup>42</sup> South Carolina Code §12-54-85(A).

<sup>43</sup> South Carolina Code §12-54-85(C)(4).

- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.<sup>44</sup>
- (3) The taxpayer has failed to file the return.<sup>45</sup> In this case, the Department may go back to August of 1985.<sup>46</sup>
- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.<sup>47</sup> In this case, the Department may go back to August of 1985.<sup>48</sup>
- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.<sup>49</sup>

The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the authorized amount.<sup>50</sup>

## N. Refunds and Appeals Process

The following briefly explains the South Carolina Tax Appeals Procedure for State Tax Refund Claims (Other than Property Tax, Bingo, and Alcoholic Beverage Matters). See SC Revenue Procedure #20-1 for more information on this procedure.

### Initial Process

- A. A taxpayer may seek a refund of any state tax paid (other than a property tax) by filing a written claim for refund with the Department.

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<sup>44</sup> South Carolina Code §12-54-85(C)(3).

<sup>45</sup> South Carolina Code §12-54-85(C)(2).

<sup>46</sup> South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

<sup>47</sup> South Carolina Code §12-54-85(C)(1).

<sup>48</sup> See footnote 46.

<sup>49</sup> South Carolina Code §12-54-85(C)(5).

<sup>50</sup> South Carolina Code §12-54-196.

In most instances, only the taxpayer legally liable for the tax may claim or receive a refund.<sup>51</sup> In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.<sup>52</sup>
- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.<sup>53</sup>

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.<sup>54</sup>

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

B. The refund claim must specify:<sup>55</sup>

- (a) the taxpayer's name, mailing address, and telephone number;
- (b) the appropriate taxpayer identification number or numbers;
- (c) the tax period or date for which the tax was paid;
- (d) the nature and kind of tax paid;
- (e) the amount claimed as erroneously paid;
- (f) a statement of facts supporting the taxpayer's position;
- (g) a statement outlining the reasons for the refund claim, including any law or other authority upon which the taxpayer relies; and

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<sup>51</sup> South Carolina Code §12-60-470(C)(1).

<sup>52</sup> South Carolina Code §12-60-470(C)(1)(b).

<sup>53</sup> South Carolina Code §12-60-470(C)(1)(a).

<sup>54</sup> South Carolina Code §12-60-470(C)(2).

<sup>55</sup> South Carolina Code §12-60-470(B).

- (h) any other relevant information the Department may reasonably require.
- C. As a general rule, the refund claim must be filed within three years of the time the return was filed or two years from the date the tax was paid, whichever occurs later. If no return was filed, a claim for refund must be filed within two years from the date the tax was paid.<sup>56</sup>
- D. The appropriate division of the Department will decide what refund, if any, is due and give the taxpayer written notice of its decision.
- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be filed within 90 days from the date of the written denial of the refund claim. The protest must contain the information the refund claim is required to include.
- F. During the appeals process, the taxpayer may represent himself/herself or may be represented by the same persons who may participate in the administrative tax process under Section 12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, and officers of a corporation.
- G. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.<sup>57</sup>

#### Review by the Department of Revenue and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that denied the refund claim will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the refund claim. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and the division representative to discuss the facts and issues, to allow the taxpayer to present any additional information or authority supporting the taxpayer's position, and to resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.

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<sup>56</sup> South Carolina Code §12-54-85(F).

<sup>57</sup> South Carolina Code §12-60-490.

- B. The Appeals Section will conduct a substantive review of the taxpayer's appeal and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on a preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the taxpayer's appeal is not resolved after the Appeals Section conference and review, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.
- D. A department representative within the General Counsel for Litigation's Office will conduct a substantive review of the protest and file. If the taxpayer or the department representative believe a conference would help resolve the matter, a conference will be held. The conference may be conducted by telephone if the taxpayer and the department representative agree. If the appeal is not resolved, the department representative will prepare a written department determination addressing the issues raised in the taxpayer's appeal. The department determination will be mailed or delivered to the taxpayer and, generally, must be issued within one year of the taxpayer's filing of the protest.

#### Request for a Contested Case Hearing before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer may request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. If the department determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.
- C. The request for a contested case hearing must be made in writing and must be made within 30 days of the date of the department determination or notice. The request must comply with the rules of the Administrative Law Court and include any applicable filing fee. The request must be sent to the Administrative Law Court with a copy sent to the Department.
- D. The rules of the Administrative Law Court will control from this point forward.
- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the department determination or notice, the taxpayer's refund claim will be deemed denied and no refund of taxes will be issued to the taxpayer.



## O. Penalties and Interest

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the September 2020 return is filed on October 30, 2020, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until November 23, 2020, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the September 2020 return is filed on October 30, 2020, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until November 23, 2020, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department's assessment for such taxes.

**If the taxes found to be due under the audit are not paid within 10 days of the Department's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.**

## P. Other Penalties

Penalties for operating without a retail license<sup>58</sup> are found in Chapter 36 of Title 12 of the South Carolina Code of Laws. Other penalties, including penalties for negligence<sup>59</sup> and fraud,<sup>60</sup> are found in Chapter 54 of Title 12.

## Q. Interest

The Department, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. The interest rate is published quarterly in an information letter.

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<sup>58</sup> South Carolina Code §§12-36-560 and 12-36-570.

<sup>59</sup> South Carolina Code §12-54-43(F)(1).

<sup>60</sup> South Carolina Code §12-54-44.

For fiscal year 2020-2021 (July 1, 2020 through June 30, 2021), Budget Provisos 41.2 and 117.85 (Act No. 135 of 2020) direct the Department to reduce the rate of interest paid on eligible refunds by a total of three percentage points.

## **R. Waiver of Penalties**

The Department has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department in South Carolina Revenue Procedure #08-6.

## **S. Assessments and Appeals (Including License Revocations and Denials)**

The following briefly explains the South Carolina Tax Appeals Procedure for State Tax Assessments including License Revocations and Denials (Other than Property Tax, Bingo, and Alcoholic Beverage Matters). See SC Revenue Procedure #20-1 for more information on this procedure.

### Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will send or give the taxpayer a proposed assessment. In addition, the Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations. The revocation or denial of a tax license is appealed in the same manner as a proposed assessment.
- B. The proposed assessment is the first written notice sent or given to the taxpayer stating a Division within the Department has concluded a tax is due or has proposed that a license issued by the Department be denied or revoked. It does not include the auditor's work papers, draft audit reports, or a document specifically stating it is not a proposed assessment. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.
- C. The taxpayer may appeal a proposed assessment made by the Department by filing a protest within 90 days of the date of the proposed assessment. The taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the proposed assessment with which the taxpayer agrees

may be paid to avoid additional interest and penalties, and the remainder can be appealed through the taxpayer's protest.

The revocation or denial of a tax license is appealed in the same manner as a proposed assessment.

D. The protest must be in writing and must contain, as applicable:

- (a) the taxpayer's name, mailing address, and telephone number;
- (b) the appropriate taxpayer identification number or numbers;
- (c) the tax period or date for which the tax was proposed;
- (d) the nature and kind of tax (or license) in dispute;
- (e) a statement of facts supporting the taxpayer's position;
- (f) a statement outlining the reasons for the protest, including any law or other authority upon which the taxpayer relies; and
- (g) any other relevant information the Department may reasonably prescribe.

The taxpayer does not need to provide legal or other authority if the total amount of the proposed assessment is less than \$2,500. This does not apply to partnerships, "S" corporations, exempt organizations, or employee plans if the proposed tax is imposed by Chapter 6, 11, or 13 of Title 12.

E. During the appeals process, the taxpayer may represent himself/herself or may be represented by the same persons who may participate in the administrative tax process under Section 12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, or officers of a corporation.

Review by the Department of Revenue and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that issued the proposed assessment will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the taxpayer's appeal. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and a division representative to discuss the facts and issues, to allow the

taxpayer to present any additional information or authority supporting the taxpayer's position, and to resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.

- B. The Appeals Section will conduct a substantive review of the taxpayer's protest and file and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on a preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the appeal is not resolved after the Appeals Section conference and review, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.

A department representative within the General Counsel for Litigation's Office will conduct a substantive review of the protest and file. If the taxpayer or the department representative believe a conference would help resolve the matter, a conference will be held. The conference may be conducted by telephone if the taxpayer and the department representative agree. If the appeal is not resolved, the department representative will prepare a written department determination addressing the issues raised in the appeal. The department determination will be mailed or delivered to the taxpayer and, generally, must be issued within one year of the taxpayer's filing of the protest.

#### Request for a Contested Case Hearing Before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. If the department determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.
- C. The request for a contested case hearing must be made in writing and must be made within 30 days of the date of the department determination or notice. The request must comply with the rules of the Administrative Law Court and include any applicable filing fee. The request must be sent to the Administrative Law Court with a copy sent to the Department.
- D. The rules of the Administrative Law Court will control from this point forward.

- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the department determination or notice, the taxpayer's proposed tax assessment or the revocation or denial of the license will become final and non-appealable and the Department may begin collecting on the underlying tax debt and/or the applicable license will be revoked or not issued. If the taxpayer is unable to pay the debt, the taxpayer may contact the Department about an installment agreement.

## **T. The Fairness in Lodging Act**

The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%. The revenue generated by this additional tax must be used exclusively for certain tourism purposes.<sup>61</sup>

The "Fairness in Lodging Act,"<sup>62</sup> enacted on June 9, 2014, gives municipalities and counties the option of exercising additional enforcement authority and sharing data with the Department with respect to individuals who rent residential accommodations to tourists and fail to remit the local accommodations tax and the state sales tax on accommodations. The governing body of the municipality or county that imposes the local accommodations tax may implement the provisions of the Act through an ordinance and by providing a certified copy of the ordinance to the Director of the Department.<sup>63</sup> The provisions of the Act do not apply to any residential real property lawfully assessed for property tax purposes pursuant to South Carolina Code §12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code §280A(g).<sup>64</sup>

When the provisions of the Act apply in a jurisdiction, the Department and the implementing municipality or county must share helpful data in determining possible instances of noncompliance using returns and other documents filed with or available to them.<sup>65</sup> The municipality or county must include a notice with the annual property tax notices provided to owners of residential real property assessed at 6%.<sup>66</sup> The notice must include: details of local and state accommodations taxes required to be paid by persons renting residential real property to tourists; the intention of the municipality or county to vigorously enforce the requirements; and specific directions for obtaining additional information about the requirements, including names, addresses and telephone numbers

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<sup>61</sup> South Carolina Code §6-1-520.

<sup>62</sup> South Carolina Code §6-1-810 through 6-1-825.

<sup>63</sup> South Carolina Code §6-1-815(A).

<sup>64</sup> South Carolina Code §6-1-815(B).

<sup>65</sup> South Carolina Code §6-1-820(A).

<sup>66</sup> South Carolina Code §12-43-220(e).

of municipal or county officials able to answer questions, provide forms, and assist in compliance.<sup>67</sup>

The implementing municipality or county may impose a one-time civil noncompliance penalty of \$500 to \$2,000 for each seven days that a property was rented. The one-time penalty is in addition to other penalties and interest imposed under the ordinance for failure to comply with local accommodations tax requirements of owners who rent residential accommodations to tourists. The county or municipality may not impose the additional penalty unless the owner received the notice as required under the Act. For purposes of enforcement and collection, the additional penalty is deemed a property tax on the rental property.<sup>68</sup>

The Act requires the Department to identify websites containing “rent by owner” vacation rental opportunities and to request that the websites post a statement that owners of South Carolina rental properties must be licensed and collect applicable local and state fees and taxes.<sup>69</sup>

The Act requires the Department to provide data and assistance to municipalities and counties that have implemented the Fairness in Lodging Act.<sup>70</sup> The county or municipality<sup>71</sup> and the Department<sup>72</sup> may share information in the performance of their duties required under the Fairness in Lodging Act.

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<sup>67</sup> South Carolina Code §6-1-820(B).

<sup>68</sup> South Carolina Code §6-1-820(C).

<sup>69</sup> South Carolina Code §6-1-825.

<sup>70</sup> South Carolina Code §12-4-310(11).

<sup>71</sup> South Carolina Code §6-1-120(B)(3).

<sup>72</sup> South Carolina Code §12-54-240(B)(13).

## Chapter 23

### Frequently Asked Questions

The following are some Frequently Asked Questions concerning the sales and use tax law. These questions are listed under the following categories:

- A. License and Registration
- B. Filing Returns
- C. Sales and Use Tax Rates
- D. What is Subject to the Sales and Use Tax?
- E. Government
- F. Churches and Other Nonprofit Organizations
- G. Internet Sales and Purchases
- H. Use Tax – Out-of-State Purchases
- I. Construction
- J. Medicine and Medical Supplies
- K. Farmers
- L. Maximum Tax
- M. Administrative
- N. Refunds
- O. Penalties and Interest
- P. Local Taxes
- Q. Food
- R. Resale and Exemption Certificates
- S. Other
- T. Accommodations

The answers to these questions were written in a non-technical manner, and if you have further questions, please contact either the Department of Revenue or your tax professional. However, where deemed necessary, the answer is footnoted to reference code sections, regulations or advisory opinions that may help the reader better understand the issue.

## **A. License and Registration**

### **1. Who needs a retail license or a use tax registration?**

A retail license is required of every person in the business of selling or auctioning tangible personal property at retail, whether owned by the person or others, including persons operating as a marketplace facilitator as defined in Code Section 12-36-71. Out-of-state retailers who have physical presence nexus or economic presence nexus (i.e., remote sellers) with South Carolina are required to obtain a retail license. A license must be obtained for each location of a business selling tangible personal property at retail. (Since the sales tax law applies to certain services, a retail license is required for each location selling at retail any service specifically subject to the sales tax.) Remote sellers who meet the economic nexus requirements in SC Revenue Ruling #18-14 must also obtain a retail license.

A use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases tangible personal property for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser. (Since the use tax law applies to certain services, a use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases such a service for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser.)

Note: Retailers do not need to obtain a separate use tax registration since the sales tax return provides them the opportunity to remit the use tax on any property or service purchased for their own use (not for resale).

### **2. How do I obtain a retail license?**

A retail license may be obtained by mail, online or in person.

To obtain a license by mail, complete Form SCDOR-111 or SCDOR-111 RS (for remote sellers) and mail the application, along with \$50.00, to:

SC Department of Revenue  
Registration Section  
Columbia, SC 29214-0140

To obtain a license online, go to the Department's website ([dor.sc.gov](http://dor.sc.gov)) and click on MyDORWAY.



**3. What is the cost of a retail license and how long is it valid? Do I need to renew it every year?**

The cost of each retail license is \$50.00, and the license is valid as long as the same retailer continues to operate the business at that location (unless revoked by the Department). If ownership of the business changes the retail license is no longer valid and the new owner must obtain a new retail license.

**4. Do I need a retail license for each location of my retail business? Can I use one license at multiple locations?**

A license is required for each location of the business.

**5. If I move my business to a new location, do I need to purchase a new retail license?**

If a retailer closes a location so as to move the business to a new location, the retailer does not need to purchase a new license. However, the retailer must turn the license over to the Department and provide the information as to the new location so the Department can issue a license with the new address of the business.

**6. What qualifications do I have to meet to apply for and obtain a retail license?**

To obtain a retail license, a person (a) must be engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail; (b) must complete an application; (c) must remit the \$50.00 fee with the application; and (d) must not have any outstanding tax liabilities of any kind with the Department.

**7. Why can't I transfer my retail license from my name to the new owner's name without paying another \$50?**

Since the sales and use tax law specifically states that a retail license is not transferable or assignable, a retail license may not be transferred to another person when a business is sold.

**8. Why can't I keep a retail license in case I "later on" decide to have a business?**

Since a retail license may only be issued to a person engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail, a person who is no longer in that business must surrender the retail license to the Department immediately upon closing the business.

**9. Where and what can I sell with this retail license?**

A retail license is only valid for the one specific location; however, the Department also issues (i) a transient license to a business that does not have a permanent location in South Carolina but only operates at one location at a time and (ii) an artist or craftsman license that may only be used at one location at a time.

A retail license is for the purpose of selling as a business tangible personal property, or one of the specifically taxed services, at retail. For example, if a clothing store owner expands to begin selling furniture at the same location, a new retail license is not needed since both clothing and furniture are tangible personal property and the location where the sales take place has not changed.

**10. Do I have to have a retail license for flea market sales even if the items to be sold are used items?**

If you sell at flea markets only once a quarter, you do not need a retail license unless making retail sales at flea markets is a regular business in which you are engaged.

**11. Do I have to have a license for a yard sale at my house?**

If you conduct a yard sale only once a quarter, you do not need a retail license unless conducting yard sales is a regular business in which you are engaged.

**12. What do I need to sell beer and wine?**

Since beer and wine are tangible personal property, a person selling beer and wine at retail must have a retail license. In addition, the person must also obtain a beer and wine permit from the Department and may need to obtain permits or licenses from other state agencies and local governments.

**13. I have a business that is 95% service. Why do I need to purchase a retail license for the small amount of product that I do sell? Is it not legal to just pay the sales tax on those items when purchased from the vendor and be done with it?**

If a business is engaged in selling tangible personal property at retail, even if it is a small part of the overall business, the business must obtain a retail license and remit the sales tax on those sales. For example, if 95% of a hair salon's business is the result of the non-taxable service of cutting and styling hair and only 5% is from the sale of hair care products, the salon must still obtain a retail license and remit the sales tax on its sale of the hair care products.

**14. I'm a contractor, how can I qualify to get a retail license?**

A contractor provides a service and is considered the user or consumer of the building material the contractor buys to provide this construction service. Therefore, a contractor is not entitled to obtain a retail license unless the contractor has a "second" business of regularly selling tangible personal property at retail.

For example, a plumbing business that only contracts to provide the plumbing improvements to a general contractor of residential homes is not entitled to a retail license. However, if this plumbing business also operates a retail plumbing supply store, then it will need a retail license for the store.

**15. If I am a landscaper, do I need a retail license?**

A landscaper is a contractor that provides a service and is considered the user or consumer of the plants and other supplies the landscaper buys to provide this service. Therefore, a landscaper is not entitled to obtain a retail license unless the landscaper has a "second" business of regularly selling tangible personal property (plants, grass sod, etc.) at retail.

For example, a landscaper that only contracts to provide landscaping improvements to a general contractor of residential homes is not entitled to a retail license. However, if this landscaper also operates a retail nursery or rents indoor, potted plants, then it will need a retail license for the nursery or rental business.

**16. If I'm located in North Carolina and purchase products from a South Carolina vendor for resale and request that the product be shipped to my South Carolina customer, do I need a South Carolina license to purchase items to resell — I do not have a business in South Carolina?**

If you have either physical presence nexus or economic presence nexus with South Carolina, then you must obtain a retail license. If you do not obtain a retail license and collect and remit the sales or use tax, however, your South Carolina customer is liable for the use tax on any purchase at retail.

Physical presence includes, but is not limited to:

1. Out-of-state seller maintains, either directly or by subsidiary, an office, distribution house, warehouse, other place of business, or property in South Carolina.
2. Out-of-state seller has an agent, salesman, representative, independent contractor, or employee operating in South Carolina, either permanently or temporarily.

3. Out-of-state seller installs the property it sells in South Carolina.
4. Out-of-state seller regularly engages in any activity in connection with the lease or rental or servicing of property located in South Carolina.
5. Out-of-state seller delivers product to South Carolina customers in company vehicles.

Economic presence nexus is established if a business exceeds \$100,000 of gross revenue from sales into South Carolina in either the current or prior calendar year. See Chapter 13 of this manual and SC Revenue Ruling #18-14 for more information on nexus.

- 17. If I publish a booklet to be given away free (similar to the one used to sell houses and cars) to advertise different businesses and their products, do I need a retail license to collect and pay sales tax?**

No. Since you are not selling the booklet, you do not need a retail license (provided you are not selling any other tangible personal property).

- 18. If I do not make retail sales, but I need to remit the use tax on my out-of-state purchases, do I need a retail license?**

No. You would only need to register to remit the use tax. There is no charge for a use tax registration. For individuals, use tax may be reported and remitted on the South Carolina Individual Income Tax Return (Form SC 1040) or by filing a Use Tax Payment Return (Form SC UT-3). See SC Revenue Ruling #18-9 for more information on use tax for individuals, businesses, and nonprofits.

- 19. Do I need a retail license if I provide a service?**

If the service you are providing is not one of the specifically taxed services under the sales and use tax, then you would not need a retail license.

If the service you are providing is one of the specifically taxed services under the sales and use tax, then you would need a retail license.

## **B. Filing Returns**

- 1. When are sales and use tax returns due?**

Sales and use tax returns are due by the 20<sup>th</sup> of the month following the end of the month, calendar quarter or year, depending on the seller's filing period.

For **monthly filers** (who constitute the vast majority of filers), the return is due on the 20<sup>th</sup> of the month following the month in which the sales occurred. For example, for sales that occur in March, the March return must be filed by April 20<sup>th</sup>.

For **calendar quarter filers**, the return is due on the 20<sup>th</sup> of the month following the end of the calendar quarter in which the sales occurred. For example, for sales that occur in the July through September calendar quarter, the quarterly return must be filed by October 20<sup>th</sup>.

For **calendar year filers**, the return is due on the 20<sup>th</sup> of the month following the end of the calendar year in which the sales occurred. For example, for sales that occur in the 2020 calendar year, the calendar year return must be filed by January 20, 2021.

**2. Can I file quarterly or annually instead of monthly?**

Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department.

**3. How do I determine if I can file a use tax return monthly, quarterly, or yearly?**

To determine if you are eligible to file quarterly or annually, please contact to the Department's Licenses and Registration Section or one of the Department's Taxpayer Service Centers. Generally, if the total tax due (state and local) on any return does not exceed \$100.00 for any month, a quarterly return may be filed provided it has been approved by the Department.

**4. Do I need to file a return if I don't make any sales for a particular filing period (e.g., month, quarter)?**

Yes.

**5. Can I file my return online?**

Yes. To file online, visit the Department's website at [dor.sc.gov](http://dor.sc.gov) and click on MyDORWAY for information about filing a sales and use tax return online.

**6. When is the sale complete?**

A sale is complete, or has occurred, when the seller has delivered the tangible personal property to the customer and the customer has paid or has a binding obligation to pay.

For example, if a customer pays the retailer for a product on October 30th, but the product will not be delivered to the customer by the retailer until November 4th, the sale has occurred in November and should be reported on the retailer's November sales and use tax return.

**7. What form or forms do I use to file my sales and use tax return?**

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer's business. The following forms are used depending on the taxpayer's business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
Retail	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389, ST-593
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 12 and SC Revenue Ruling #18-15 for information on a retailer's responsibilities for remitting local sales and use taxes.

**8. If I am required to file the local tax form (ST-389), do I have to send all 3 pages of the local tax form, the ST-389?**

Yes.

**9. Why are the local option forms (ST-389) so complicated? Local option forms are very difficult for some people with small or home-based businesses.**

The local sales and use tax form, the ST-389, has admittedly become complicated as a result of the various new local taxes that have been authorized over the years. In addition, while these local taxes are similar, they do not necessarily have the same tax base. This further complicates the form.

**10. Does South Carolina allow a discount for a timely filed return? How is the timely filed discount calculated?**

South Carolina will allow a discount for timely filing a sales and use tax return, provided the taxes due on the return are paid in full and by the due date. The discount is calculated based on the total taxes (state and local) due with the return.

For returns showing a total tax due (state and local) of less than \$100.00, the discount is 3% of the total tax due. For example, if a return shows a total tax due (state and local) of \$80.00, the discount allowed for that return is \$2.40 ( $\$80.00 \times 3\%$ ) and the retailer would remit a total payment of \$77.60 ( $\$80.00 - \$2.40$ ) with that return.

For returns showing a total tax due (state and local) of \$100.00 or more, the discount is 2% of the total tax due. For example, if a return shows a total tax due (state and local) of \$200.00, the discount allowed for that return is \$4.00 ( $\$200.00 \times 2\%$ ) and the retailer would remit a total payment of \$196.00 ( $\$200.00 - \$4.00$ ) with that return.

However, in no event may a taxpayer (regardless of the number of retail locations the taxpayer has in the state), receive a discount in excess of \$3,000 during any one state fiscal year (returns filed from July 1st through the following June 30th). This would be the June return filed in July through the May return filed in the following June. For taxpayers who file electronically, the discount maximum for a state fiscal year is \$3,100 instead of \$3,000. In addition, out-of-state taxpayers who cannot be required to file a sales and use tax return due to a lack of nexus with South Carolina, but who do so voluntarily, may also qualify for a discount.

**11. What are the deductions that I can take on the worksheet on the return?**

Deductions are the exclusions and the exemptions authorized under the sales and use tax law.

Exclusions: While there are several exclusions authorized in the law, the primary exclusions are “sales for resale” – which are also referred to as “wholesale sales.” “Sales for resale” are items sold by a wholesaler or retailer that are not sold to the ultimate user or consumer under the sales and use tax law, but are sold to another wholesaler or retailer who will in turn sell it. The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

For example, if Seller A, a new boat retailer, sells a used boat that he accepted as a trade-in to Seller B, a used boat retailer, the sale of the used boat from Seller A to Seller B is a sale for resale by Seller A. Seller A would report the sale on his tax return as part of his total sales and then take a deduction for it as a sale for resale.

By taking a deduction, Seller A would not pay tax on the sale since it was not a retail sale but a wholesale sale (sale for resale). Seller B would remit the tax on the used boat if and when he sells it to the ultimate consumer.

Exemptions: Exemptions are retail sales that have been specifically exempted from the tax by the General Assembly. Most of the exemptions from the sales and use tax can be found in South Carolina Code §12-36-2120. Examples of sales exempt from the sales and use tax under this section include but are not limited to:

- Sales to the federal government
- Sales of textbooks for use in a course of study in K through 12 as well as colleges
- Sales of livestock
- Sales of unprepared foods
- Sales of certain farm machinery
- Sales of certain manufacturing machines
- Sales of gasoline and diesel fuel subject to the state motor fuel user fee
- Sales of prescription medicine sold by prescriptions
- Sales exempt during the Sales Tax Holiday in August

For example, if Seller X sold office supplies to the federal government, then Seller X would report the sale on his tax return as part of his total sales and then take a deduction for it as an exempt retail sale to the federal government. By taking a deduction, Seller A would not pay tax on the sale since it was is an exempt retail sale.

A sale must fall squarely within the requirements of an exemption in order for the exemption to apply. Therefore, please review the wording of the exemptions in South Carolina Code §12-36-2120 carefully.



**12. Can I merely report my taxable sales or must I report all sales and then report and deduct the applicable exclusions and exemption using the worksheet on page 2 of the return?**

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.

**13. What is a sale for resale?**

A “sale for resale” is a non-taxable wholesale sale. When a wholesaler or retailer makes a “sale for resale” the wholesaler or retailer is selling the item to another wholesaler or retailer who will in turn sell the item to another person – either another seller or to the ultimate consumer.

The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

**14. If I am a retailer and I don’t have the money to pay the sales tax due, what should I do?**

First of all, it is important that you file your return on time and remit the tax due with the return. However, if you are unable to remit the tax due with the return, it is important that you file your return on time. Separate penalties are imposed for failure to file a return on time and failure to remit taxes on time. By filing your return on time, you can avoid the failure to file penalties. The Department will then assess you for the tax due, plus penalties and interest. However, the sooner you remit the tax due the less penalties and interest you will owe.

**15. If a retailer sells a computer and it is returned the next month, is the retailer entitled to a refund for the taxes paid?**

If the retailer refunds the buyer the full sales price, no tax is due on the original sale so the retailer is entitled to a refund.

If the retailer does not refund the buyer the full sales price (keeping any portion as a restocking fee, handling fee, or for any other reason), the original sale is still valid and the retailer is not entitled to a refund.

**16. Are “additional guest charges” at hotels and other places that furnish accommodations subject to the tax?**

Yes. The sales tax is imposed upon charges and rentals for accommodations and “additional guest charges.” The term “additional guest charge” means an amount which is added to the guest’s room charge for room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an “additional guest charge.”

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

For more detailed information on “additional guest charges,” see SC Revenue Ruling #14-5 and South Carolina Revenue Ruling #14-7.

**17. Can the Department identify retailers that will only make sales in their county and streamline the sales tax returns for such retailers? In other words, can the Department eliminate the several pages of the local tax form (ST-389) that would not apply to such retailers?**

Since the Department does not know when a retailer will deliver items into other counties, the Department cannot specifically identify such retailers and issue them a streamlined sales tax form that eliminates or reduces the local tax form.

**18. How do you fill out the sales tax return?**

Since there are several different sales tax returns, depending on the retailer’s business, and local sales and use taxes, it is not possible to provide a step-by-step discussion on how to complete a sales and use tax return. However, two sources provided by the Department should assist retailers in completing a return.

First, the instructions for the sales and use tax returns provide detailed information concerning the completion of a return.

Second, the Department conducts free workshops throughout the year that explain how to complete a sales and use tax return. These workshops provide retailers the opportunity to ask questions they may have concerning the return. The information as to these free workshops can be found on the Department’s website.

However, retailers should remember the following when completing a sales and use tax return:

- (1) Report all sales (taxable and non-taxable) on the worksheet on page 2 of the return, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.
- (2) Always make sure you are using the correct pre-printed return for the tax period. For example, make sure you use the May pre-printed return for May sales.
- (3) Do not calculate the discount for timely filing and pay based on your total sales. The discount is calculated based on the total taxes (state and local) due.
- (4) If you are a new retailer and plan to seek help from one of our employees in completing your sales and use tax, always bring the pre-printed forms to the meeting.
- (5) Keep complete and accurate records. This is always helpful in completing your return.
- (6) Always make sure you place enough postage on the envelope when mailing your return.

#### **19. When do I have to collect local sales and use taxes?**

Retailers who have nexus with South Carolina (either physical or economic nexus) have nexus with all local jurisdictions in South Carolina for local sales and use tax purposes and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered. See SC Revenue Ruling #18-15 for more information on local sales and use tax collection and remittance requirements.

#### **20. What form do you use to amend a return for sales tax?**

A retailer can use the tax return forms (e.g., ST-3, ST-389) the retailer normally uses to file and remit sales and use taxes and check the “Amended Return” checkbox on the top of the form.

**21. Can you take a credit for overpayment of tax on the next month's return?**

No. In order to recover the overpayment, the retailer will need to file a refund claim.

**22. How does a retailer apply for a refund if the retailer overpaid tax on a previous sales tax return (e.g., ST-3)?**

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser. For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

## C. Sales and Use Tax Rates

### 1. What is the state sales and use tax rate?

South Carolina imposes the following state tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%
Manufactured Home	5% + 2% for amounts over \$6,000 <sup>1</sup>
Maximum Tax Items	5% (Maximum Tax: \$500 or \$300) <sup>2</sup>
Sales to Persons 85 and Older	5%

In addition, the sales tax due on the sale in South Carolina to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence is the lesser of (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or (b) the tax that would be imposed under South Carolina law. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

### 2. What are the local sales and use tax rates?

South Carolina allows the imposition of various types of local sales and use taxes. A county may impose one or several local sales and use taxes. For a list of counties imposing these local sales and use taxes, visit the Department's website ([dor.sc.gov](http://dor.sc.gov)).

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<sup>1</sup> If the manufactured home meets certain energy efficiency standards, the 5% tax is capped at \$300 under the maximum tax provisions of South Carolina Code §12-36-2110 and the 2% tax on amounts over \$6,000 does not apply. However, if a manufactured home that is sold anytime from July 1, 2009 through June 30, 2024, meets or exceeds certain other energy saving efficiency requirements, or ENERGY STAR requirements, of the United States Environmental Protection Agency and the United States Department of Energy, then the sale of the manufactured home is exempt.

<sup>2</sup> Unless otherwise exempt (see, e.g., South Carolina Code §12-36-2120(83)), a \$500 maximum tax applies to sales of aircraft (including unassembled aircraft which is to be assembled by the purchaser), motor vehicles, motorcycles, boats, trailers and semitrailers that can only be pulled by a truck tractor, horse trailers, fire safety education trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), and self-propelled light construction equipment limited to a maximum 160 net engine horsepower. A \$300 maximum tax applies to sales of certain musical instruments and office equipment to religious organizations exempt under IRC Section 501(c)(3).

## **D. What is Subject to the Sales and Use Tax?**

### **1. What sales or transactions are subject to the sales and use tax?**

The sales tax is imposed on the sales at retail of tangible personal property and certain services. The use tax is imposed on the storage, use or consumption of tangible personal property and certain services when purchased at retail from outside the state for storage, use or consumption in South Carolina. There are also special imposition sections that tax the fair market value of tangible personal property when used, stored or consumed by its manufacturer and a special imposition section that taxes transient construction property brought into South Carolina.

### **2. Are any services or intangibles subject to the sales and use tax?**

The services and intangibles subject to the sales and use tax are:

- Furnishing of Accommodations (the state rate for this service is 7%)
- Dry Cleaning and Laundering Services
- Electricity
- Communication Services including, but not limited to:
  - \* Telephone services (not specifically exempted under South Carolina Code §12-36-2120(11)), including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of other method
  - \* Teleconferencing Services
  - \* Paging Services
  - \* Automated Answering Services
  - \* Cable Television Services
  - \* Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
  - \* Fax Transmission Services

- \* Voice Mail Messaging Services
- \* E-Mail Services
- \* Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return
- \* Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service)
- \* Streaming services for television programs, movies, music, and other similar content
- \* Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System
- \* Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see Revenue Ruling #04-4.)
- \* 900/976 Telephone Service (the state tax rate on this type of communication service is 11%, not 6%)

### **3. Are rentals or leases subject to the sales and use tax?**

Yes. Any rental or lease of tangible personal property, or a taxable service, at retail is subject to the tax.

The sales and use tax law defines the term “sale” to includes rentals, leases, licenses to use, or any other agreement.

### **4. Are consignment sales subject to the tax and who is responsible for consignment sales taxes?**

Consignment sales, including sales by marketplace facilitators, are subject to the sales and use tax. The retailer selling the items on consignment is the person responsible for remitting the tax on the consignment sale. For example, Individual X makes handmade jewelry and has an agreement with Z Store to place the jewelry in the store for sale by the store. Z Store is the retailer and is responsible for

remitting the tax on these sales, even though Z does not own the jewelry in the store for sale by the store. Z Store is the retailer and is responsible for remitting the tax on these sales, even though Z does not own the jewelry.

**5. Are delivery charges by whatever name (e.g., freight, shipping, transportation, etc.) subject to the sales and use tax? Who is responsible for delivery charges?**

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via the retailers own trucks, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are FOB Destination, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are FOB Shipping Point, then the delivery charge is not considered part of the tax base upon which the tax is calculated and is not subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are not specified, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

However, in no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any delivery charges associated with the exempt sale) is exempt. See SC Regulation 117-310 and SC Revenue Ruling #19-9.

**6. Are late fees subject to the sales and use tax?**

When a retailer sells tangible personal property or a taxable service at retail and the customer is charged a late fee associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax, unless the late fee is one charged a customer with respect to a late payment of a bill for electricity or natural gas, or both.



In the case of a late fee charged a customer with respect to a late payment of a bill for electricity or natural gas, or both, the charge for the electricity or natural gas, or both is subject to the tax but the late fee is not subject to the tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any late fee charges associated with the exempt sale) is exempt.

**7. Are installation charges subject to the sales and use tax?**

When a retailer sells tangible personal property at retail and the customer is charged an installation fee associated with the sale, the installation charge is not subject to the sales and use tax provided it is separately stated on the bill to the customer and the installation charge is reasonable based on the books and records of the retailer.

If the installation charge is not separately stated on the bill to the customer or the installation charge is not reasonable based on the books and records of the retailer, then the installation charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any installation charge associated with the exempt sale) is exempt.

**8. Are set up charges (e.g., screen printers, personalized items, etc.) subject to the sales and use tax?**

When the “true object” of a transaction is the retail sale of tangible personal property or a taxable service and the customer is charged a set-up fee (e.g., screen printers, personalized items, etc.) associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any set-up fee associated with the exempt sale) is exempt.

**9. Is the sale of food subject to the sales and use tax?**

Yes. The sale of food is subject to the sales and use tax; however, the sales and use tax law provides exemptions for the sale of certain foods, including but not limited to:

- (a) meals provided to elderly or disabled persons at home by nonprofit organizations.
- (b) food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization.
- (c) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- (d) unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. Important: See SC Regulation 117-337 for details about what sales do or do not qualify for this exemption.

**10. Are charges for warranty contracts subject to the sales and use tax?**

Warranty Contracts sold in conjunction with the sale of the tangible personal property are subject to the sales and use tax unless the sale of the tangible personal property is exempt from the tax.

Note: With limited exceptions, effective September 1, 2011, the sales and use tax will no longer apply to a warranty contract purchased after the tangible personal property is purchased.

**11. Is canned software subject to the sales and use tax?**

Canned software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Canned software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

**12. Is custom software subject to the sales and use tax?**

Custom software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Custom software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

**13. Is software sold via an Application Service Provider (ASP) model subject to sales and use tax?**

Software delivered via an Application Service Provider, whereby the seller maintains the software on a website and the purchaser pays to access the software on that website, is subject to the sales and use tax.

For more information, see S.C. Revenue Ruling #03-5 as well as Section D, Question #2, of this Chapter.

**14. I'm located in Ohio and purchase products from a manufacturer not located in South Carolina. The manufacturer is registered with South Carolina to collect sales tax and is charging me South Carolina sales tax. Do I have to pay South Carolina sales tax to the manufacturer?**

If the manufacturer is delivering the product to you in Ohio, then the South Carolina sales and use tax would not apply. If the product is being delivered to a location in South Carolina, then the South Carolina sales and use tax would apply.

**15. Are valet laundry services at a hotel subject to the sales and use tax?**

Sales of laundry and drycleaning valet services by a hotel to its guest are subject to the sales tax and are taxed at the rate of 6%, plus any applicable local sales and use taxes.

**16. If a customer comes to my store, purchases an item and has me ship the item by mail, common carrier or by a company truck to another person out-of-state, is that sale subject to the sales tax?**

No.

**17. If a customer purchases an item at my store and the customer intends to personally ship the item to another person out-of-state by mail or common carrier, is that sale subject to the sales tax?**

Yes.

## **E. Government**

### **1. Are sales to the government subject to the sales and use tax?**

Sales to the federal government of tangible personal property or taxable services are not subject to the sales and use tax.

Sales to the State, counties, municipalities, and other local political subdivisions (e.g., schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property or taxable services are subject to the sales and use tax, unless such sales are otherwise exempt.

### **2. Are sales by the government subject to the sales and use tax?**

Sales by the federal government of tangible personal property or taxable services are not subject to the sales and use tax.

Sales by the State, counties, municipalities and other political subdivisions of the State (e.g., schools, sheriff offices, municipal housing authorities, and welfare agencies) of tangible personal property or taxable services are subject to the sales tax, unless such sales are otherwise exempt.

### **3. Are sales by a state agency to another state agency, a county, a municipality or another political subdivision subject to the sales and use tax?**

Sales by a state agency to another state agency, a county, a municipality or another political subdivision are subject to the sales and use tax, unless (1) the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property and the transferring agency has paid tax on the initial purchase of the tangible personal property or (2) the sale is exempt under the sales and use tax law (e.g., textbooks).

### **4. I have a contract with the federal government to supply and install equipment. I know sales to the federal government are exempt. What must I do to prevent charging them South Carolina sales tax or my paying South Carolina tax?**

To exempt the sales to the federal government, report all sales (including the exempt sales to the federal government) on the worksheet on your return, report and deduct the applicable exclusions and exemptions on the worksheet (including the sales to the federal government), calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions which will include the exempt sales) and remit the tax based upon your net taxable sales.

Note: Your records should document that the sale was to the federal government. In addition, while not required, you may want to ask the federal government to complete and provide you a Form ST-8 Exemption Certificate, which can be found on the Department's website ([dor.sc.gov](http://dor.sc.gov)).

## **F. Churches and Other Nonprofit Organizations**

- 1. Are sales of tangible personal property (e.g., computers, office equipment, tables, chairs, religious publications) and taxable services (e.g., electricity, drycleaning) to a church or other nonprofit organization for their own use or consumption subject to the sales and use tax?**

Yes. Sales to churches and other nonprofit organizations are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

- 2. Are sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need subject to the sales and use tax?**

Yes. Sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need are subject to the sales and use tax, unless otherwise exempted.

Note: Children's clothing which is sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the sole purpose of distribution by that organization to needy children is exempt from the sales and use tax. Clothing in this context means clothing and footwear which are exempt from sales and use tax pursuant to the annual sales tax holiday under Code Section 12-36-2120(57)(a)(i) and (iii). Needy children means children eligible for free meals under the National School Lunch Program of the United States Department of Agriculture.

- 3. May churches and other nonprofit organizations purchase building materials and furnishings tax free?**

Sales to churches and other nonprofit organizations of building materials and furnishings are subject to the sales and use tax unless specifically exempt under the sales and use tax law. For example, if a church or a nonprofit organization purchases new tables and chairs for use in its assembly or fellowship hall, or purchases a new door for its main entrance, these purchases are subject to the sales and use tax.

Purchases of construction materials are exempt if (a) the church or nonprofit is organized under Section 501(c)(3) as a nonprofit corporation, and (b) the construction materials are used to build, rehabilitate, or repair a home for an individual or family in need (i.e., an individual or family whose income is less than or equal to 80% of the county median income). See Code Section 12-36-2120(81).

**4. Our church has a 501(c)(3) exemption from the Internal Revenue Service. Doesn't this exempt our church from the sales and use tax?**

No. The 501(c)(3) exemption from the Internal Revenue Service relates to income taxes only. In order for a sale to or a sale by a church to be exempt, the exemption must be specifically provided for in the sales and use tax law.

**5. Are sales of accommodations to a church or other nonprofit organization subject to the sales and use tax?**

Yes, unless the purchase of accommodations by the nonprofit organization falls within one of the exemptions in the sales and use tax law.

**6. If a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?**

No.

**7. If a nonprofit organization other than a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?**

Yes, if the nonprofit organization does not qualify for the exemption for sales by certain nonprofit organizations and the rentals are for less than 90 consecutive days.

No, if the nonprofit organization does qualify for the exemption for sales by certain nonprofit organizations or the rentals are for 90 or more consecutive days.

**8. Are sales of tangible personal property (including accommodations) by a church or other nonprofit organization subject to the sales and use tax?**

Sales of tangible personal property by a church are exempt from the sales and use tax. The church may purchase tax free any tangible personal property it intends to resell and may sell tax free any such tangible personal property.

Sales of tangible personal property by certain other nonprofit organizations that are exempt from property taxes are exempt from the sales and use tax. The following nonprofit organizations exempt from property taxes (the property tax exemption is listed next to the type of nonprofit organization) come within the sales and use tax exemption for “sales by” the nonprofit organization:

- (1) public libraries and churches (South Carolina Code §12-37-220(A)(3));
- (2) charitable trusts and foundations used exclusively for charitable and public purposes (South Carolina Code §12-37-220(A)(4));
- (3) The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, the Marine Corps League or any similar Veterans Organization chartered by the Congress of the United States (South Carolina Code §12-37-220(B)(5));
- (4) The Young Women’s Christian Association, Young Men’s Christian Association and the Salvation Army (South Carolina Code §12-37-220(B)(6));
- (5) The Boy Scouts of America and the Girl Scouts of America (South Carolina Code §12-37-220(B)(7));
- (6) The South Carolina Association of Future Farmers of America (South Carolina Code §12-37-220(B)(8));
- (7) Any fraternal society, corporation or association (South Carolina Code §12-37-220(B)(12));
- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association (South Carolina Code §12-37-220(B)(16));
- (9) Volunteer Fire Departments and Rescue Squads (South Carolina Code §12-37-220(B)(19));
- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis (South Carolina Code §12-37-220(B)(22)); and,
- (11) nonprofit or eleemosynary community theatre companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts (South Carolina Code §12-37-220(B)(24)).

An organization whose sales or purchases are exempt as a result of this exemption is also exempt from the retail license tax.

This exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization's sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

**9. How can a nonprofit organization determine if the “sales by” the nonprofit organization are exempt from the sales and use tax?**

To simplify the administration of the sales tax exemption for “sales by” certain nonprofit organizations and to assist nonprofit organizations in determining if they qualify for the sales tax exemption for “sales by” the nonprofit organizations, the nonprofit organization should complete and file Form ST-387– Application for Sales Tax Exemption under South Carolina Code §12-36-2120(41), “Exempt Organizations.”

The law does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the Department has reviewed the matter and determined that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization.

- I. An organization is considered to be “*automatically*” qualified for an exemption certificate if it is:
  - A. Selling tangible personal property;
  - B. Exempt from property tax under one of the property tax code sections listed in South Carolina Code §12-36-2120(41); and,



- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as “automatically” qualified, an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this “automatic” qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

II. An organization is not qualified for an exemption certificate if it is:

- A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,
- B. Exempt from property tax, but under a code section not listed in South Carolina Code §12-36-2120(41).

Note: South Carolina Code §12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in South Carolina Code §12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in South Carolina Code §12-36-2120(41). For example, a private school may qualify for the property tax exemption under South Carolina Code §12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.<sup>3</sup>

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<sup>3</sup> Note: See, however, *Greenville Hospital System v. South Carolina Department of Revenue*, 13-ALJ-17-0523-CC (June 20, 2017), *appeal filed*, No. 2017-001548 (S.C. Ct. App. July 17, 2017), where the court concluded that “GHS as either a political subdivision or charitable hospital may not be exempt from sales and use tax pursuant to § 2120(41).” The Administrative Law Court upheld the imposition of sales and use tax on sales of meals in the taxpayer’s on-site hospital dining facilities. However, the taxpayer filed an appeal of this order on July 17, 2017. As of the date of this publication, this case is still pending before the South Carolina Court of Appeals.

III. Organizations, other than those in categories I and II (above), may qualify for an exemption certificate, if the following criteria are met:

- A. The organization must be selling, or will sell, tangible personal property;
- B. The organization must be a type referred to in South Carolina Code §12-36-2120(41) [i.e., a church, veterans' organization, YMCA, Scouts, etc.]; and,
- C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

## **G. Internet Sales and Purchases**

**1. Are sales by or purchases from, a retailer via the Internet subject to the sales and use tax?**

Sales by, and purchases from, a retailer via the Internet of tangible personal property or a taxable service are subject to the sales and use tax.

**2. Are charges by an Internet Service Provider to access the Internet subject to the sales and use tax?**

No. As a result of federal legislation, charges to access the Internet are not subject to the sales and use tax.

**3. Are charges by the operator of a website of the Internet to access that individual website subject to the sales and use tax?**

Yes. For example, if a sports website charges a South Carolina resident \$10 per month to access the sports website or to access a "premium" section of the sports website, then the \$10 per month is subject to the sales and use tax.

**4. Is a marketplace facilitator responsible for remitting state and local sales and use tax for products sold via its marketplace?**

Yes. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

**5. Is a third party whose products are sold only through a marketplace operated by a marketplace facilitator required to obtain a retail license and remit the sales and use tax?**

No. Since the third party's products are sold only through a marketplace operated by a marketplace facilitator, the third party is not a retailer and, therefore, is not required to obtain a retail license or remit sales and use tax on such sales.

**6. If I am located in South Carolina and sell products from my home through my own website, do I need a retail license? I don't have a store front and customers do not come to my home to purchase the products. I receive the orders via the Internet (customer makes order, calculates tax based upon the state the product is shipped to) and I forward my orders to my suppliers and request that they deliver the products to my customers. My suppliers will bill me for the products after they are delivered.**

Yes. You are engaged in the business of selling tangible personal property at retail in South Carolina and must obtain a retail license and remit the sales tax on all orders shipped to a South Carolina address.

## **H. Use Tax – Out-of-State Purchases**

**1. What is the use tax?**

The use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state.

**2. What is the rate for the use tax?**

The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax will be the 6% state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

Note: Information concerning local sales and use tax rates can be found on the Department's website ([dor.sc.gov](http://dor.sc.gov)).

**3. What is the difference between the sales tax and the use tax?**

The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department.

The use tax is imposed upon the consumer of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. The use tax has been around since 1951 – the same year the sales tax law was adopted in South Carolina.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax applies to a single transaction, but not both.

**4. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?**

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has nexus with South Carolina.<sup>4</sup>

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

**5. If an out-of-state retailer who has obtained a retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?**

If the purchaser has a receipt showing the proper South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

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<sup>4</sup> See SC Revenue Rulings #18-14 and #14-4, and Chapter 13 of this manual for a discussion of nexus.

6. **If a South Carolina purchaser buys merchandise via an Internet or mail-order catalog retailer that has not obtained a South Carolina retail license and therefore does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?**

Yes.

7. **If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?**

The South Carolina purchaser would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina.

Example #1: If a South Carolina purchaser paid \$15.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$15.00 and would only owe a South Carolina use tax of \$3.00.

Example #2: If a South Carolina purchaser paid \$21.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$21.00 and no use tax would be due in South Carolina since the \$21.00 paid exceeds the \$18.00 due in South Carolina. However, the purchaser is not entitled to a refund of the difference between the \$21.00 paid in the other state and the \$18.00 due in South Carolina.

Note: Each transaction must stand on its own. In other words, an "excess" paid to another state on one purchase transaction, as shown in Example #2, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. **If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?**

Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt

from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.

**9. How can a person report and pay the use tax to the Department?**

See SC Revenue Ruling #18-9 for guidance on reporting and paying the use tax.

**10. Do other states charge a use tax?**

Yes. Every state that imposes a sales tax also imposes a use tax.

**11. Why did the out-of-state seller tell me if I picked up the merchandise, rather than have it delivered, that I wouldn't have to pay the tax?**

Most likely, the out-of-state seller was indicating that if you picked up the merchandise in the other state that you would pay the other state's tax at that time. If so, you would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

**12. Why am I just now getting a notice from the Department when I purchased the items 3-5 years ago?**

The Department receives information from various sources (other state tax departments, US Customs, etc.) concerning purchases by South Carolina residents.

This information is not relayed to the Department at the time of purchase but usually several years later as a result of audits conducted of the seller by the other state or information forwarded to the Department by others. The Department does not control when it receives this information; however, the Department does make an effort to issue these notices as soon as possible after the information is received by the Department.

**13. Who provides the Department with information about residents making purchases out-of-state?**

This information is provided to the Department by other state tax departments, US Customs, regional and national tax associations, and other sources.

**14. My friend buys merchandise all the time from out-of-state sellers and doesn't pay the tax, why doesn't he get a bill for tax?**

Assuming your friend does not pay the tax to the out-of-state seller, your friend is liable for the use tax and should remit that tax to the Department. While the

Department receives information from sources that allows it to assess residents the use tax with respect to out-of-state purchases, this information does not include information on all out-of-state purchases.

**15. My accountant never told me about the use tax, so why should I have to pay a penalty?**

If your accountant also assists you with your individual income tax return, he should ask you about out-of-state purchases upon which the use tax may be due since the individual income tax return contains a line for remitting any use tax due.

However, if you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department.

**16. Why am I charged a penalty when no one told me I had to pay the use tax when I purchased the merchandise? I thought the seller had to collect the use tax? Why do I have to pay a penalty & interest when I didn't know I owed the tax?**

If you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department. While some sellers are required to remit the use tax on behalf of their customers, the purchaser is ultimately responsible for remitting the use tax if the seller does not remit the use tax.

**17. If a South Carolina retailer purchases items from out of state that the retailer does not intend to resell, does the South Carolina retailer owe the use tax on these purchases?**

Yes. Since these items are being purchased for use by the retailer and not for resale, then these purchases are subject to the use tax. The South Carolina retailer should remit the use tax on the line provided on the sales and use tax return filed by the retailer for the month these items were purchased. However, the retailer would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

## **I. Construction**

**1. What determines if I am a contractor or a retailer?**

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is in the business of “selling tangible personal property at retail.”

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in determining whether a person is a retailer making sales and installations or a contractor include, but are not limited to: how the person advertises his business (as a retailer or contractor), are retail sales made in which installation is not performed by the seller or on behalf of the seller, does the person have a showroom to display his products and how would this showroom be perceived by the general public, is the person licensed as a contractor under state law, does the person perform labor for a general contractor as a “subcontractor,” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination. In addition, see Chapter 16, Section B. for a discussion about a retailer who made retail sales and installations.

**2. As a contractor, do I owe sales or use tax on materials for job sites.**

If a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased.

**3. Are construction contractors allowed to have a retail license for items purchased to use in their construction business?**

No. A person whose only business is that of a construction contractor may not obtain a retail license. Only a person engaged in the business of selling tangible personal property at retail is entitled to a retail license.

**4. Are landscaping businesses contractors or retail businesses?**

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is in the business of “selling tangible personal property at retail.”

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor), are retail sales made in which installation is not performed by the seller or on behalf of the seller, does the person have a showroom to display his products and how would this showroom be perceived by the general public, is the person licensed as a contractor under state



law, does the person perform labor for a general contractor as a “subcontractor,” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination.

## **J. Medicine and Other Medical Supplies**

### **1. Why are some drugs purchased by a doctor tax-exempt and others are not? Why should doctors pay use tax on drugs?**

For sales and use tax purposes, a doctor is the user or consumer of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered. Therefore, the sale to, or purchases by, the doctor of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered are subject to the sales and use tax.

However, if the medicine is:

- a) a prescription medicine used to prevent respiratory syncytial virus or used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases;
- b) a prescription medicine used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or
- c) an injectable medication or injectable biologic administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility;

and the doctor extends a properly executed single sale exemption certificate (Form ST-8) to the manufacturer, wholesaler or other supplier indicating the doctor will use the prescription medicine in the manner prescribed under the exemption statute, then such sales are exempt from the sales and use tax.

Note: Code Section 12-36-2120(80) was added in 2012 to phase-in an exemption for injectable medications and injectable biologics (Item c above). The injectable medication or injectable biologic must be administered by or pursuant to the

supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. For purposes of this exemption, “biologics” means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

**2. What durable medical equipment sales are taxable and at what rate? I sell durable medical equipment and I want to know what qualifies?**

Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws are not subject to sales and use tax. Such sales are also not subject to applicable local sales and use tax. In order for the purchase of the durable medical equipment and related supplies to qualify for this exemption, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sales or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Sales of durable medical equipment meeting the requirements of this exemption that are made on or after January 1, 2013 are fully exempt.

Note: For more detailed information as to what qualifies as durable medical equipment and related supplies, retailers should review the definitions of durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws.

**3. If I’m selling medical products (diapers, diabetic shoes & undergarments) and getting paid by Medicare or another source why do I have to pay sales tax?**

When a retailer sells any tangible personal property, including medical products, the sale is subject to the tax regardless of how the payment is made (Medicare,

Medicaid, private insurance, or directly by the customer or another person on behalf of the customer), unless the sale is specifically exempted under the sales and use tax law.

Note: Sales paid for via Medicare or Medicaid are not sales to the federal government and are subject to the sales and use tax, unless the sale is specifically exempted under the sales and use tax law.

## **K. Farmers**

### **1. Why do farmers have to pay sales tax?**

Sales of tangible personal property or taxable services at retail to all persons, including farmers, are subject to the sales and use tax unless the sale is specifically exempted under the sales and use tax law.

### **2. Are sales of farm machinery to a farmer subject to the sales and use tax?**

Sales of farm machinery meeting the requirements of the exemption in the sales and use tax law for farm machinery are exempt from the sales and use tax. If the sale of farm machinery does not meet the requirements of the exemption, the sale is taxable.

### **3. What farm equipment qualifies for exemption from the sales and use tax?**

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

- Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.
- Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.
- Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons used in planting, cultivating or harvesting farm crops; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does not apply to:

- automobiles and trucks;
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

**4. Does the sale of a lawn mower to a farmer qualify for the exemption for farm machinery?**

No, unless the lawn mower is used by a farmer in planting, cultivating or harvesting a farm crop for sale (*e.g.*, a farmer in the business of growing grass sod for sale and the mower is used for that purpose). A lawn mower used for the farmer's residential lawn would not qualify for the exemption.

**5. Does this exemption apply to equipment for my personal garden where I grow vegetables for my family?**

No.

**6. As a retailer of various items, including farm supplies and machinery, I am being asked by some farmers not to charge sales tax on an item they are purchasing. What should I do?**

Sales to farmers are subject to the sales and use tax unless the sale falls within one of the exemptions established by the General Assembly for farmers.

The General Assembly has authorized the Department to create an exemption certificate specifically for farmers to use in purchasing items the General Assembly has exempted from the sales and use tax. The exemption certificate, Form ST-8F, can be found in the forms section of the Department's website ([dor.sc.gov](http://dor.sc.gov)).

A farmer can provide you this form to purchase one of the items listed on the form tax free. This shifts the liability for the tax to the farmer so that if the farmer uses an item for a non-exempt purpose, the farmer is liable for the tax plus any applicable penalties and interest.

## **L. Maximum Tax**

**1. Do golf carts qualify for the maximum tax?**

No.

**2. Do mopeds qualify for the maximum tax?**

Mopeds which must be registered with the SC Department of Motor Vehicles under Title 56, Chapter 3, are subject to an infrastructure maintenance fee and are exempt from sales and use tax under Code Section 12-36-2120(83). For information on mopeds purchased by nonresidents to be registered or used outside of South Carolina, see SC Information Letter #17-10.

## **M. Administrative**

**1. What is the mailing address for the Department of Revenue?**

Charleston Service Center: 2070 Northbrook Blvd., Suite B7  
North Charleston, SC 29406

Columbia Main Office: 300A Outlet Pointe Boulevard  
Columbia, SC 29210  
P.O. Box 125  
Columbia, SC 29214

Florence Service Center:	181 East Evans Street, Suite 5 Florence, SC 29506
Greenville Service Center:	33 Villa Road, Suite 401 Greenville, SC 29615
Myrtle Beach Service Center:	1350 Farrow Parkway Suite 200 Myrtle Beach, SC 29577
Rock Hill Service Center:	775 Addison Avenue, Suite 201 Rock Hill, SC 29730

**2. What kind of records do I need to keep if I have a retail license and for how long?**

Since every business keeps records in its own manner, the Department does not issue a list of the types of records that must be maintained. However, the law requires all taxpayers to maintain “proper records” and imposes penalties for failure to maintain “proper records.” Records must be retained for at least 4 years after the return was filed or due to be filed, whichever is later.

SC Regulation 117-200 provides additional information concerning recordkeeping.

**3. What is the purpose of a resale certificate?**

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

A resale certificate is used by a retailer to purchase items tax free that the retailer will resell. The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.

3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

A copy of Form ST-8A, Resale Certificate, can be found at the Department's website ([dor.sc.gov](http://dor.sc.gov)). It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller. Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the "Uniform Sales & Use Tax Certificate" published by the MultiState Tax Commission ("MTC") may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser's retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser's retail business.

If a purchaser uses a resale certificate to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax, then the purchaser is liable for a penalty of 5% of the amount of the tax for each month, or fraction of a month, during which the failure to pay the tax continues, not exceeding 50% in the aggregate. This penalty is in addition to all other applicable penalties authorized under the law.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer.

4. **My address has changed & I never received the bill (assessment) from the Department. How can I now get the lien off my business?**

To discuss a lien, please contact your local Taxpayer Service Center and ask to speak to the Collections Supervisor.

5. **A retailer is charging too much sales tax on my purchases. What can the Department do about it?**

The best course of action is usually to discuss the matter with the manager at the store. If that does not work, you may contact the Department (by letter or telephone). The Department will investigate the matter. However, please understand that as a result of privacy laws the Department will not be able to provide you any information about the investigation or its results.

**6. I am a licensed retailer. If I do not charge my customers the sales tax, do I have to pay the sales tax to the Department?**

Yes. The sales and use tax is due whether or not the retailer collects the tax from the customer.

**7. I operate a motel and I received an exemption certificate from a church located in Florida. They provided me with a Florida tax exemption certificate. Should I accept this exemption certificate?**

No. An exemption certificate from another state is not valid in South Carolina. Each state has its own exemptions from the sales and use tax that are only valid with respect to that state's sales and use tax.

## **N. Refunds**

**1. What information is required when filing a claim for refund? How far back can we file a claim? What is the statute?**

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

The statutory provisions concerning a refund claim are South Carolina Code §12-54-85 and Chapter 60, Article 5, Subarticle 1 of Title 12.



**2. Who is the taxpayer that can apply for and receive a refund with respect to sales tax and use tax?**

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser.

For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

**3. Does the Department issue a credit memo for refunds?**

No.

**4. Can a retailer apply an overpayment to a return?**

No. The retailer must request a refund and if the Department approves the refund a check will be issued to the retailer.

## **O. Penalties and Interest**

**1. What is your interest rate?**

The interest rate is subject to change on a quarterly basis. It is based on the interest charged by the Internal Revenue Service. The rate is compounded daily except simple interest applies to the underpayment of declaration of estimated tax. Under two provisos reenacted by the General Assembly, the interest rate for refunds is presently 3% lower than the interest rate for assessments.

The Department issues an Information Letter each quarter to announce the quarterly interest rate.

**2. How is penalty and interest calculated?**

To calculate basic failure to file penalties, failure to pay penalties and interest, go to the Department's website.

## **P. Local Taxes**

- 1. What counties have local option sales and use taxes, transportation sales and use taxes and other local sales and use taxes administered and collected by the Department? When did it start?**

The first local sales and use taxes were imposed in 1991. For a list of the local sales and use taxes that are presently being imposed, visit the Department's website at [dor.sc.gov](http://dor.sc.gov).

- 2. Which local sales and use tax applies when I deliver into another county? Is there a difference if I ship the product or personally deliver it?**

Retailers who have nexus with South Carolina have nexus with all local jurisdictions in South Carolina for local sales and use tax purposes and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered.

Delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

FOB Destination or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, But Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

NOTE: Retailers reporting sales for purposes of the local option tax must report their sales by county and municipality where delivery occurs.

Retailers cannot rely on mailing addresses in reporting the local option tax. A mailing address is not an accurate indication as to whether or not a location is within a particular municipality or county.

3. **Is a retailer required to remit a local sales and use tax for every county in which the retailer does business or may the retailer remit only the local sales and use tax for the county in which my retail store is located?**

The retailer must remit the local sales and use tax based on the county in which the retailer delivered the product or service. For example, if a retailer with a store in Richland County delivers a product on his own truck to a customer in Lexington County, the retailer must remit the local sales and use tax imposed in Lexington County.

4. **Why doesn't the Department implement any new local sales and use tax at the beginning of a calendar quarter (i.e., April 1st, July 1st, October 1st, or January 1st)? This would greatly reduce the impact on quarterly sales and use tax filers.**

The date a new local sales and use tax is implemented is not controlled by the Department. These implementation dates are established in the law by the General Assembly and, in accordance with the law, the date the local authorities notify the Department that the referendum approving the tax has been certified. In order to establish a uniform implementation date, such as the first day of a calendar quarter, the General Assembly would need to amend the various local sales and use tax laws.

## **Q. Food**

### **1. What qualifies a sale for the unprepared food exemption?**

Foods eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) include:

- (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
- (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
- (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed below.

Food and other items which are not eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:

- (1) Alcoholic beverages, such as beer, wine, or liquor;
- (2) Hot beverages ready-to-drink such as coffee;
- (3) Tobacco;
- (4) Hot foods ready to eat;
- (5) Foods designed to be heated in the store;
- (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
- (7) Vitamins and medicines;
- (8) Pet food;
- (9) Any non-food items such as tissue, soap or other household goods;
- (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,

(11) Prepared meals or food (See definition in SC Regulation 117-337.2.)

**For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.**

**2. What food items are exempt when sold by a convenience store?**

Sales of foods eligible for the unprepared food exemption by a convenience store engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and that may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under the unprepared food exemption in South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

**For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.**

**3. Why am I paying more sales tax for milk and bread at convenience stores in Richland County than I do at convenience stores in Lexington County?**

The sale of milk and bread at a convenience store qualifies for the state exemption for unprepared food. This exemption does not apply to local sales and use taxes, unless the sale occurs in one of the counties with a local sales and use tax law that exempts sales of unprepared food.

Since the local sales and use taxes in Richland County do not exempt sales of unprepared foods and the one in Lexington County does, you should be paying a 2% sales tax (0% state and 2% local) in Richland County, and you should not be paying any sales tax on unprepared food in Lexington County.

#### **4. Why do some retailers charge a sales tax on sodas?**

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

For a more detailed explanation of the exemption for unprepared foods, see SC Regulation 117-337.

## **R. Resale and Exemption Certificates**

### **1. What items may be purchased tax free by a retailer?**

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

As stated above, items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. An example of an exemption available for a retailer is the purchase of containers used incident to the sale and delivery of tangible personal property. For example, the plastic and paper bags purchased by a grocery store into which the store places the food purchased by the customer are exempt as a container used incident to the sale and delivery of the food.

**2. What does a retailer need to do when accepting a resale certificate?**

The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

**3. Does the retailer have to have a copy of a customer's resale certificate or can the retailer just write down their retail license number on the invoice and not charge them tax?**

In order for the retailer to be relieved of liability for the sales tax and switch the liability to the purchaser, the retailer must have a properly completed resale certificate on file.

**4. As a retailer what is my responsibility when issued an exemption certificate?**

If a customer provides a retailer an exemption certificate issued by the Department (Form ST-9 – Exemption Certificate), or a properly executed exemption certificate authorized by the Department (Form ST-8 – Single Sale Exemption Certificate), the retailer should sell the items to the customer tax free provided the transaction is of a type exempted by the certificate. The retailer should maintain a copy of the certificate in order to document that the sale qualified for the exemption and to document that the liability for the tax has been shifted to the purchaser.

**S. Other**

**1. How does the sales tax apply to sales from vending machines?**

By law, the operator of a vending machine is considered the user or consumer of all items the operator sells from the vending machine, except cigarettes and soft drinks in closed containers.

Therefore, when the vending machine operator purchases anything the operator will sell from the vending machine (other than cigarettes and soft drinks in closed containers), the purchase by the operator is subject to the tax. When the vending

machine operator purchases cigarettes and soft drinks in closed containers, the vending machine operator may purchase cigarettes and soft drinks in closed containers tax-free, but is subject to the sales tax on the sale of cigarettes and soft drinks in closed containers from the operator's vending machines.

**2. What is exempt during the sales tax holiday?**

The General Assembly has authorized one sales tax holiday each calendar year. This three day sales tax holiday exempts sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of (i) clothing; (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (iii) footwear; (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators; (v) computers, printers and printer supplies, and computer software; (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

The exemption allowed by this item does not apply to (i) sales of jewelry, cosmetics, eyewear, wallets, watches; (ii) sales of furniture; (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; (iv) rental of clothing or footwear; (v) a sale or lease of an item for use in a trade or business.

**3. Does the gross proceeds that a retailer must report on a sales tax return include the sales tax?**

No. For example, if a retailer sells an item for \$100 and collects from the customer a 6% state sales tax of \$6 (no local tax due in this example), then the gross proceeds to be reported on the return is \$100, not \$106.

**4. If a retailer does not charge a customer the correct tax percentage, is the customer liable for the difference?**

If the tax is a sales tax, the customer is not liable for the difference.

If the tax is a use tax, the customer is liable for the difference.

**5. If I must pay a property tax each year on my vessel, is use tax still due?**

The property tax and the use tax are two separate taxes. The use tax is due at the time of purchase of the vessel when a vessel is purchased outside of South Carolina for use in South Carolina. The property tax is an annual tax on property situated in South Carolina.



**6. How do you register a business name in South Carolina?**

The registration of a business name is handled by the South Carolina Secretary of State.

**7. If a business sells one of its assets, is the sale of that asset (e.g., furniture) subject to the sales and use tax?**

It depends –

- (a) If the business selling the asset is selling it for resale by the buyer, then the sale is a wholesale sale and is not subject to the sales and use tax.
- (b) If the business selling the asset is selling it for use by the buyer and the business selling the asset is not engaged in the business of selling tangible personal property at retail (e.g., a law firm, an accounting firm), then the sale is a casual and isolated sale and it is not subject to the sales and use tax.
- (c) If the business selling the asset is selling it for use by the buyer and the business selling the asset is engaged in the business of selling tangible personal property at retail (a retailer, such as a grocery store, an equipment rental store, a department store), then the sale is a retail sale subject to the sales and use tax. In South Carolina, all sales of tangible personal property at retail by a retailer, whether it is inventory or a business asset, are subject to the sales and use tax unless the sale qualifies for one of the exemptions found in the sales and use tax law. See Code Section 12-36-2120 for a list of the exemptions, including one for the sale of depreciable assets when the entire business is sold and the purchaser continues the operation of the business (Code Section 12-36-2120(42)).

## **T. Accommodations**

**1. If a person charges for renting a room or for otherwise furnishing sleeping accommodations, would the charge be subject to the state sales tax and what is the tax rate?**

Yes. The charge for providing accommodations is subject to the statewide sales tax rate of 7% (5% state and 2% local accommodations) plus any applicable local sales and use tax rate administered and collected by the Department on the behalf of counties. For information relating to the local sales and use taxes administered by the Department, visit our website at [dor.sc.gov](http://dor.sc.gov).

**2. Are there any charges for accommodations that are not subject to sales tax?**

Sales tax on accommodations does not apply (1) to the lease or rental of accommodations supplied to the same person for a period of 90 continuous days; or (2) where the home consists of less than six sleeping rooms contained on the same premises and the owner resides in the home while renting the rooms to others on a daily or weekly basis; the home must serve as the owner's "place of abode" at the time the other rooms are rented; or (3) where the rental income is wholly excluded from the gross income of the taxpayer under Internal Revenue Code Section 280A(g). (Internal Revenue Code Section 280A(g) allows a taxpayer to exclude from gross income the rental income derived from a dwelling unit used during the tax year by the taxpayer as a residence, provided that the dwelling unit is rented for less than 15 days during the tax year.)

**3. How do you report and pay tax electronically?**

The Department's MyDORWAY system will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard, Visa).

**4. What form or forms do you use to report and pay sales tax on accommodations?**

A. ST-388 (State Sales, Use, and Accommodations Tax Return). This form is used by taxpayers who are liable for the state sales tax imposed on accommodations furnished to transients. The form is used to report the state sales tax imposed on accommodations, sales of tangible personal property and any use tax imposed on purchases. The Form ST-388 must be submitted to the Department along with the Forms ST-3T and ST-389 at the same time. If you are licensed with the Department for the purposes of remitting sales tax on accommodations, you must file the ST-388 return even if there is no tax due for the period.

The ST-388 is used for reporting the total charges for rooms, lodging and accommodations subject to sales tax at 7%. This form is designed with three columns (A, B, and C) across the front. Sales and purchases subject to tax in Column A at the 6% rate include sales such as meals, gift items, additional guest charges, and purchases of hotel or motel supplies. However, charges for accommodations are excluded from Column A and the worksheet for Column A. The 7% sales tax imposed on sales of accommodations is reported under Columns B (at 5%) and C (at 2%). Columns B and C are used to report the 7% sales tax on the gross proceeds derived from the rental or charges for any room or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions from sales tax on the worksheet to calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax – applicable deductions) and remit the tax based upon your net taxable sales.

- B. ST-3T (State Accommodations Report by County or Municipality). This form must be filed with the Form ST-388 at the time of filing even if you have only one rental unit in the county or municipality where your business is located. You must use this form to separately report the 2% portion of the total gross proceeds from business done in each county or municipality. This tax is reported under Column C of the ST-388 form.
- C. ST-389 (Schedule of Local Sales and Use Taxes Administered by the Department). ST-389 is used to report the various local sales and use taxes administered and collected by the Department on taxable sales and purchases. This form is not required to be filed with the state form ST-388 if the retailer is located in a county that does not impose local sales and use tax and does not make deliveries into other counties that do impose local sales and use tax.

**5. When is the accommodations tax return due?**

The accommodations tax return is due on or before the twentieth (20<sup>th</sup>) day of the month following the close of the period ended. To be considered timely filed, the return must be received or postmarked by the 20<sup>th</sup> of the month. If the 20<sup>th</sup> falls on a weekend or legal holiday, the return is due on the next business day.